(29)

No. 01-1289

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,

Respondents.

ON WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 1, 2002
CERTIORARI GRANTED JUNE 3, 2002

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THIRD DISTRICT COURT SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

CURTIS B. CAMPBELL vs.
STATE FARM MUTUAL AUTOMOBILE

CASE NUMBER 890905231 Personal Injury

CURRENT ASSIGNED JUDGE
WILLIAM B. BOHLING

PARTIES

Plaintiff - CURTIS B. CAMPBELL
Represented by: W. SCOTT BARRETT
Represented by: ROGER P. CHRISTENSEN
Represented by: L. RICH HUMPHERYS

Defendant - STATE FARM MUTUAL AUTOMOBILE
Represented by: PAUL M. BELNAP

Defendant - STATE FARM MUTUAL AUTOMOBILE
Represented by: GLENN C. HANNI

Defendant - STATE FARM MUTUAL AUTOMOBILE
Represented by: STUART H. SCHULTZ

Plaintiff - INEZ PREECE CAMPBELL
Represented by: W. SCOTT BARRETT
Represented by: ROGER P. CHRISTENSEN
Represented by: L. RICH HUMPHERYS

CASE NOTE
* COUNSEL FOR DEFT PRO HAC VICE
J CRANDALL-E BROWN-W ZULCH

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10-18-95	Note: FILED: REPLY MEMORANDUM IN SUPPORT OF PLTFS' MO IN LIMINE NO. 12	mikeh
10-18-95	Note: FILED: MEMORANDUM RE ADMISSIBILITY OF JUDGE CHRISTOFFERSON'S POST TRIAL EVALUATION OF FAULT TO DAMAGES	mikeh
10-18-95	Note: FILED: REPLY MEMORANDUM IN SUPPORT OF PLTFS' MOTION IN LIMINE NO. 13 AND MEMORANDUM IN OPPOSITION TO DEFT'S MOTION TO COMPEL	mikeh

10-23-95	Note: FILED: STATE FARM'S MEMORANDUM IN OPPOSITION TO PLTFS' MEMORANDUM REGARDING ADMISSIBILITY OF JUDGE CHRISTOFFERSON'S POST-TRIAL EVALUATION OF FAULT TO DAMAGES	mikeh
10-23-95	Note: FILED: STATE FARM'S TRIAL MEMORANDUM RE: APPLICATION OF THE "FAIRLY DEBATABLE" STANDARD	mikeh
10-23-95	Note: FILED: AFFIDAVIT OF WILLIAM B. LITHGOW	mikeh
10-24-95	Note: FILED: MINUTE ENTRY- PRETRIAL MO HRG HELD, DEFT'S MO IN LIMINE #12 & #13 ARE DENIED. (SEE M.E. FOR FURTHER RULING) JURY IMPANELED (2 ALTERNATES). DEFT'S MOTION FOR EXCLUS RULE IS GRNTD. FURTHER TRJ 10-25-95 9:00 A.M.	melbar
10-24-95	Note: FILED: DEFENDANT'S REQUESTED SUPPLEMENTAL JURY VOIR DIRE QUESTIONS	melbar
10-25-95	JURY TRIAL SCHEDULED ON OCTOBER 25, 1995 AT 09:31 AM IN FOURTH FLOOR - W42 WITH JUDGE BOHLING	convert
10-25-95	Note: FILED TRIAL BRIEF REGARDING EXCLUSION OF MEMBERS OF MUTUAL COMPANIES FOR CAUSE	melbar

10-25-95	Note: FILED: MINUTE ENTRY- 2ND DAY OF TRL. JUROR EXCUSED. EXHIB'S RECD	melbar
10-26-95	Note: FILED: PLAINTIFF'S TRIAL MEMORANDUM REGARDING INAPPLICABILITY OF "FAIRLY DEBATABLE" DEFENSE	melbar
10-26-95	Note: FILED: PRELIMINARY STATEMENT/INSTRUCTIONS	melbar
10-26-95	Note: FILED: MINUTE ENTRY- 3RD DAY OF TRJ. FURTHER TRJ CON'T TO 10-27-95 9:30 A.M.	melbar
10-27-95	Note: FILED: MINUTE ENTRY- 4TH DAY OF TRL. FURTHER HRG CONT TO 10-31-95 @ 9:30 AM.	melbar
10-27-95	Note: FILED: MINUTE ENTRY- HRG ON MOTION HELD, CT DENIES MOTION TO ALLOW MANUAL INTO EVIDENCE IN THIS TRIAL.	melbar
10-31-95	Note: FILED: MINUTE ENTRY- 5TH DAY OF TRL. FURTHER TRL CON'T TO 11-1-95 9:30 AM.	melbar
11-01-95	Note: FILED: DISPOSITION OF WILLIAM B. LITHGOW (CERTIFIED COPY)	melbar
11-01-95	Note: FILED: MINUTE ENTRY- 6TH DAY OF TRL. FURTHER TRL CON'T TO 11-2-95 9:30 AM. DEPO OF BILL LITHGOW OPENED & PUB.	melbar

11-02-95	Note: FILED: MINUTE ENTRY- 7TH DAY OF TRL. FURTHER TRL CON'T TO 11-3-95 @ 8:45 AM.	melbar
11-03-95	Note: FILED: MINUTE ENTRY- 8TH DAY OF TRL. DEPO'S OF STEVENSON, GEDDES E. CHRISTENSEN, & BRINKMAN. FURTHER TRL CON'T TO 11-7-95 9:30 A.M.	melbar
11-07-95	Note: FILED: LETTER TO THE COURT FROM L. RICH HUMPHRIES DATED 6-2-95	melbar
11-07-95	Note: FILED: MINUTE ENTRY- 9TH DAY OF TRL. PLTF & DEFT RESTED. FURTHER TRL CON'T TO 11-8-95 9:30 AM.	melbar
11-08-95	Note: FILED: JURY INSTRUCTIONS	
11-08-95	Note: FILED: DEFT'S REQUESTED JURY INSTRUCTIONS	mikeh
11-08-95	Note: FILED: PLTFS' REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM	mikeh
11-08-95	Note: FILED: PLTFS' ALTERNATIVE JURY INSTRUCTIONS	mikeh
11-08-95	Note: FILED: MINUTE ENTRY- JURY VERDICT ENTERED AS FILED HEREIN. JURY EXCUSED. SCHED CONF TO BE SET, COUNSEL TO CONTACT COURT.	melbar

11-08-95	Note: FILED: JURY LIST (2)	melbar
11-08-95	Note: FILED: COURT'S COPY JURY INSTRUCTIONS	melbar
11-08-95	Note: FILED: SPECIAL VERDICT (SIGNED)	melbar
11-17-95	Note: FILED: NOTICE OF SCHEDULING CONFERENCE (AS ABOVE)	
12-08-95	Note: FILED: STATE FARM'S OBJECTION TO PLTF'S PROPOSED JUDGMENT ON THE VERDICT	mikeh
12-11-95	Note: FILED: MINUTE ENTRY- CASE IS RESCHED FOR TRJ 6-4-96 9:30 AM, W/	melbar
12-11-95	FINAL PRETRIAL ON 5-20-96 9:00 AM. (8 TRIAL DAYS EA SIDE) JURY INST & PROP VOIR DIRE DUE 6-4-96. JGMT ON – VERDICT ON 1ST TRL ENTERED. MO CUTOFF DATE SET 1-31-96, OPPOS BRIEFS BY 2-26-96 W/ REPLY BY 2-26-96. MOTIONS HEARD BY 3-4-96 10:00 AM. NON-DISP MO'S FILED BY 3-29-96, DISC CUTOFF SET 3-29-96, WRITTEN DISC BY 4-30-96. ALL EXCH OF EXHIB'S BY 4-29-96, EXCH OF WITN BY PLA 2-29-96 & DEF BY 3-29-96.	melbar
12-11-95	2ND PRETRIAL DATE IS 4-15-96 9:00 A.M. PLTF COUNSEL TO PREPARE THE ORDER.	melbar

12-11-95	Note: FILED: JUDGMENT ON THE VERDICT	melbar
12-14-95	Note: FILED: MEMORANDUM OF COSTS AND DISBURSEMENTS	mikeh
12-20-95	Note: FILED: OBJECTION TO PLTF'S MEMORANDUM OF COSTS AND DISBURSEMENTS	mikeh
12-20-95	Note: FILED: LETTER TO THE COURT (FAX COPY) FROM GLENN C. HANNI DATED 12-7-95	melbar
12-29-95	Note: FILED: LETTER TO THE COURT FROM GLENN C. HANNI DATED 10-23-95	melbar
01-05-96	Note: FILED: MINUTE ENTRY- ARG HELD, RULINGS AS READ INTO RECORD.	melbar
01-09-96	Note: FILED: SCHEDULING ORDER AND ORDER REGARDING OBJECTION TO PROPOSED JUDGMENT ON THE VERDICT	melbar
01-12-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION TO TRY COMPENSATORY DAMAGE ISSUE FIRST & SEPARATE FROM INTENTIONAL INFLICTION CLAIMS	mikeh

1-12-96	Note: FILED: MOTION TO TRY COMPENSATORY DAMAGES ISSUE FIRST AND SEPARATE FROM INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FRAUD AND PUNITIVE DAMAGE CLAIMS	mikeh
01-25-96	Note: FILED: MEMORANDUM IN SUPPORT OF DEFTS PROPOSED ORDER CONCERNING RULINGS RENDERED 1/5/96	mikeh
01-25-96	Note: FILED: STATE FARM'S OBJECTIONS TO PLTFS' PROPOSED ORDER ON HEARING OF 1/5/96, ET AL	mikeh
01-31-96	Note: FILED: DEFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLTFS' CLAIM OF FRAUD	mikeh
01-31-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FRAUD	mikeh
02-01-96	Note: FILED: MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	

02-01-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	melbar
02-05-96	Note: FILED: STATEMENT OF COMPLIANCE RE: DISCOVERY RULINGS, MOTION AND MEMO RE: EXTENSION OF TIME, MEMOS RE: ATTORNEY/CLIENT PRIVILEGE AND PRESIDENT'S FORECAST, IDENTIFICATION OF RULE 30(B)(6) WITNESSES, AND REQUEST FOR HEARING	mikeh
02-08-96	Note: FILED: MEMORANDUM DECISION	melbar
02-09-96	Note: FILED: PLTFS' MEMORANDUM IN OPPOSITION TO DEFT'S MOTION TO TRY COMPENSATORY DAMAGE ISSUE FIRST AND SEPARATE FROM INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FRAUD & PUNITIVE DAMAGE CLAIMS	mikeh
02-20-96	Note: FILED: PLTFS' MEMORANDUM IN OPPOSITION TO DEFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FRAUD	mikeh

02-20-96 Note: FILED: PLTFS' MEMORANDUM IN OPPOSITION TO DEFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLTFS' CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS mikeh

02-20-96 Note: FILED: STATE FARM'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO TRY COMPENSATORY DAMAGE ISSUE FIRST AND SEPARATE FROM INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FRAUD, AND PUNITIVE DAMAGE CLAIMS mikeh

02-21-96 Note: FILED: STATE FARM'S OBJECTIONS TO PLTFS' SECOND PROPOSED ORDER ON HEARING OF 1/5/96

02-28-96 Note: FILED: REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING ATTORNEY FEES

02-28-96 Note: FILED: REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLTFS' CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS mikeh

02-28-96 Note: FILED: REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING FRAUD mikeh

02-29-96 Note: FILED: PROPOSED PLAN FOR NATIONAL SAMPLINGS OF DIVISIONAL CLAIMS MANAGER PP&R'S mikeh

02-29-96 Note: FILED: PLTFS' REPLY TO STATE FARM'S OBJECTIONS TO PLTFS' SECOND PROPOSED ORDER ON HEARING OF 1/5/96 mikeh

03-01-96 Note: FILED: PLTFS' MEMORANDUM IN OPPOSITION TO DEFT'S MOTION FOR PROTECTIVE ORDER ON PRESIDENT'S FORECAST mikeh

03-01-96 Note: FILED: PLTFS' DESIGNATION OF WITNESSES FOR SECOND TRIAL mikeh

03-01-96 Note: FILED: PLTFS' MEMORANDUM IN OPPOSITION TO DEFT'S MOTION FOR PROTECTIVE ORDER REGARDING VIDEO TAPE mikeh

03-26-96 Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 3/5/96 mikeh

03-26-96 Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 3/6/96 mikeh

03-26-96 Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 3/7/96 mikeh

03-27-96	Note: FILED: DEFT STATE FARM MUTUAL INSURANCE COMPANY'S SUPPLEMENTAL DESIGNATION OF WITNESS	mikeh
03-28-96	Note: FILED. SATISFACTION OF JUDGMENT ENTERED 3/8/96 96-217(2206470)	doloresc
03-29-96	Note: FILED: PLTFS' MOTION IN LIMINE NO. 15 (TO EXCLUDE EVIDENCE OR ARGUMENT THAT THE UNDERLYING VERDICT WAS UNREASONABLE, EXCESSIVE OR BASED ON INSUFFICIENT EVIDENCE)	mikeh
03-29-96	Note: FILED: MEMORANDUM IN SUPPORT OF PLTF'S MOTION IN LIMINE NO. 15 (TO EXCLUDE EVIDENCE OR ARGUMENT THAT THE UNDERLYING VERDICT WAS UNREASONABLE, EXCESSIVE OR BASED ON INSUFFICIENT EVIDENCE)	
03-29-96	Note: FILED: PLTFS' MOTION IN LIMINE NO. 16	mikeh
03-29-96	Note: FILED: MEMORANDUM IN SUPPORT OF PLTFS' MOTION IN LIMINE NO. 16	mikeh
03-29-96	Note: FILED: MOTION IN LIMINE NO. 17	mikeh

03-29-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 17	mikeh
03-29-96	Note: FILED: DEFT STATE FARM'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A CONSOLIDATED PRETRIAL HEARING TO DETERMINE THE ADMISSIBILITY OF "OTHER ACTS" EVIDENCE (URCP 16(B); UTAH RULES OF EVIDENCE 104)	mikeh
03-29-96	Note: FILED: MOTION FOR A CONSOLIDATED PRETRIAL HEARING TO DETERMINE THE ADMISSIBILITY OF "OTHER ACTS" EVIDENCE (URCP 16(B); UTAH RULES OF EVIDENCE 104)	mikeh
03-29-96	Note: FILED: DEFT STATE FARM'S MEMORANDUM OF POINTS AND AUTHORITIES RE EXCLUSION OF EVIDENCE OF OTHER ALLEGED IMPROPER CLAIMS, POLICIES, PROCEDURES, AND PRACTICES (UTAH RULES OF EVIDENCE 403 & 404)	mikeh
03-29-96	Note: FILED: MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF OTHER ALLEGED IMPROPER CLAIMS, POLICIES, PROCEDURES & PRACTICES	mikeh

03-29-96	Note: FILED: MEMORANDUM IN SUPPORT OF DEFT'S MOTION IN LIMINE FOR AN ORDER EXCLUDING PATTERN AND PRACTICE EVIDENCE	mikeh
03-29-96	Note: FILED: DEFT STATE FARM'S MEMORANDUM OF POINTS AND AUTHORITIES RE MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF SPOLIATION OF EVIDENCE	mikeh
03-29-96	Note: FILED: MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF SPOLIATION OF EVIDENCE	mikeh
03-29-96	Note: FILED: SUPPLEMENTATION OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S DESIGNATION OF WITNESSES	mikeh
04-04-96	Note: FILED: SUPPLEMENTATION OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S DESIGNATION OF WITNESSES	mikeh
04-04-96	Note: FILED: PLTFS' MOTION UNDER RULE 54(B) URCP TO SET ASIDE JUDGE ROKICH'S ORDER LIMITING PLTFS' DAMAGES	mikeh

04-04-96	Note: FILED: MEMORANDUM IN SUPPORT OF PLTFS' MOTION UNDER RULE 54(B)	mikeh
04-04-96	Note: URCP TO SET ASIDE JUDGE ROKICH'S ORDER LIMITING PLTFS' DAMAGES	mikeh
04-08-96	Note: FILED: MINUTE ENTRY- DEFT'S MOTION TO COMPEL GRNTD AS READ. MOTION TO ALLOW DEFT'S MOTION FOR OUT OF ST COUNSEL, GRNTD REMAINING MOTIONS CON'T FOR HRG TO 4-9-96 10:00 AM.	melbar
04-22-96	Note: FILED: DEFT'S MEMORANDUM IN OPPOSITION TO PLTFS' MOTION UNDER RULE 54(B) URCP TO SET ASIDE JUDGE ROKICH'S ORDER LIMITING PLTF'S DAMAGES	mikeh
05-03-96	Note: FILED: MOTION IN LIMINE NO. 18	anitag
05-03-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 18	anitag
05-07-96	Note: FILED: MEMORANDUM IN OPPOSITION TO PLAINTIFFS MOTIONS IN LIMINE	anitag
05-07-96	Note: NO 15 AND 16-	anitag

05-08-96	Note: FILED: MINUTE ENTRY- CT FINDS TAPE IS NOT PROTECTED BY ATTY CLIENT PRIV. (SEE M.E. FOR FURTHER INFO) CC TO COUNSEL.	melbar
05-08-96	Note: VIDEO TAPE RETURNED TO MR. SCHULTZ	
05-09-96	Note: FILED: DEFENDANTS MOTION IN LIMINE TO IDENTIFY WITNESSES AND DESIGNATE DEPOSITION TESTIMONY	anitag
05-09-96	Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO IDENTIFY WITNESSES AND DESIGNATE DEPOSITION TESTIMONY	anitag
05-09-96	Note: FILED: DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE SELECTION AND COMPENSATION OF STATE FARMS CEO AND PRESIDENT, OFFICERS AND BOARD OF DIRECTORS	anitag
05-09-96	Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE SELECTION AND COMPENSATION OF STATE FARMS CEO AND PRESIDENT, OFFICERS AND DIRECTORS	anitag

05-09-96	Note: FILED: DEFENDANTS MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT REFERENCE TO AND EVIDENCE OF A NEW FEE SPLITTING AGREEMENT AMONG SLUSHER, OSPITALS AND CAMPBELLS	anitag
05-09-96	Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT, REFERENCE TO, AND EVIDENCE OF A NEW FEE SPLITTING AGREEMENT AMONG SLUSHER, OSPITALS AND CAMPBELLS	anitag
05-09-96	Note: FILED: MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT REFERENCE TO OR EVIDENCE OF DISCOVERY DISPUTES AND ORDERS	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT REFERENCE TO EVIDENCE OF DISCOVERY DISPUTES AND ORDERS	anitag
05-09-96	Note: FILED: STATE FARM'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF NON-PARTY BI CLAIM HANDLING PRACTICES AND/OR PROCEDURES	anitag

05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF STATE FARM'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF NON-THIRD PARTY BI CLAIM HANDLING PRACTICES AND/OR PROCEDURES	anitag
05-09-96	Note: FILED: MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING STATE FARM FIRE COMPANY'S EXCESS LIABILITY HANDBOOK	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE EXCELL LIABILITY HANDBOOK	anitag
05-06-96	Note: FILED: MOTION IN LIMINE TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING STATE FARM FIRE	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING STATE FARM FIRE	anitag
05-09-96	Note: FILED: STATE FARM'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF CALVIN THUR	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF STATE FARM'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF CALVIN THUR	anitag

05-09-96	Note: FILED: MOTION IN LIMINE TO EXCLUDE EVIDENCE OF ALL NON-UTAH PP&RS	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE OF ANY NON-UTAH PP&RS	anitag
05-09-96	Note: FILED: DEFENDANTS MOTION IN LIMINE TO EXCLUDE INA DELONG'S TESTIMONY	anitag
05-09-96	Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE INA DELONG FROM TESTIFYING AT TRIAL	anitag
05-09-96	Note: FILED: MOTION TO COMPEL IDENTITY OF TRIAL EXHIBITS	anitag
05-09-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION TO COMPEL IDENTITY OF TRIAL EXHIBITS	anitag
05-09-96	Note: FILED: DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY ARGUMENT OR EVIDENCE REGARDING WENDELL BENNETT'S ALLEGED COMMENT TO CURTIS CAMPBELL ABOUT SELLING HIS REAL PROPERTY	anitag

05-09-96 Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO PROHIBIT ANY ARGUMENT OR EVIDENCE REGARDING WENDELL BENNETT'S ALLEGED COMMENT TO CURTIS CAMPBELL ABOUT SELLING HIS REAL PROPERTY anitag

05-09-96 Note: FILED: MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF SAMANTHA BIRD'S, FELIX JENSEN'S, AND CLARK DAVIS' EMPLOYMENT CLAIMS AGAINST STATE FARM anitag

05-09-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF SAMANTHA BIRD'S, FELIX JENSEN'S, AND CLARK DAVIS' EMPLOYMENT CLAIMS AGAINST STATE FARM anitag

05-09-96 Note: FILED: MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER CASES anitag

05-09-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER CASES anitag

05-09-96 Note: FILED: MOTION IN LIMINE FOR AN OTHER EXCLUDING: EVIDENCE OF DOCUMENT DESTRUCTION IN GENERAL, AND SPECIFICALLY THE SAMANTHA BIRD, ELAINE RIGLER APRIL 1990 MINUTES "BURIED ALIVE" VIDEO, AND 1995 LETTER FROM DAN COCHRAN anitag

05-09-96 Note: FILED: DEFENDANTS MEMORANDUM IN SUPPORT OF MOTION IN LIMINE FOR AN ORDER EXCLUDING: EVIDENCE OF DOCUMENT DESTRUCTION IN GENERAL AND SPECIFICALLY THE SAMANTHA BIRD APRIL 1990 MEMORANDUM, ELAINE RIGLER APRIL 1990 MINUTES, "BURIED ALIVE" VIDEO, AND 1995 LETTER FROM DAN COCHRAN anitag

05-09-96 Note: FILED: MEMORANDUM IN OPPOSITION TO PLAINTIFFS MOTION IN LIMINE anitag

05-09-96 Note: NO. 17 anitag

05-09-96 Note: FILED: MOTION IN LIMINE TO IDENTIFY VIDEO EVIDENCE anitag

05-09-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO IDENTIFY VIDEO EVIDENCE anitag

05-09-96 Note: FILED: MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE FROM PLAINTIFFS WITNESSES DELONG, PRATER, AND FYE REGARDING STATE FARM'S PATTERN AND PRACTICES anitag

05-09-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE FROM PLAINTIFFS' WITNESSES DELONG, PRATER AND FYE REGARDING STATE FARM'S PATTERN AND PRACTICES anitag

05-13-96 Note: FILED: MOTION IN LIMINE NO. 19 mikeh

05-13-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 19 mikeh

05-14-96 Note: FILED: STATE FARM'S MEMO IN OPPOSITION TO PLTFS' MOTION IN LIMINE NO. 19 (EXCLUDE EVIDENCE RE: PUBLIC RELATIONS CONTRIBUTIONS) tinaa

05-14-96 Note: FILED: DEFT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S SUPPLEMENTAL DESIGNATION OF WITNESSES tinaa

05-14-96 Note: FILED: PLTFS' GENERAL MEMO IN OPPOSITION TO DEFTS' PENDING MOTIONS IN LIMINE tinaa

05-14-96 Note: FILED: MEMO IN OPPOSITION TO STATE FARM'S MOTION IN LIMINE FOR ORDER EXCLUDING PATTERN AND PRACTICE EVIDENCE tinaa

05-14-96 Note: FILED: MEMO IN OPPOSITION TO STATE FARM'S MOTION FOR EXCLUSION OF EVIDENCE OF OTHER ALLEGED IMPROPER CLAIMS POLICIES PROCEDURES AND PRACTICES (UTAH RULES OF EVIDENCE 403 &404) AND MOTION FOR EVIDENTIARY HEARING tinaa

05-15-96 Note: FILED: PLTFS' MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE TESTIMONY OF DAVID SLAGLE AND PRECLUDE SIMILAR TESTIMONY FROM BENNETT AND NEBEKER mikeh

05-15-96 Note: FILED: PLTFS' MOTION IN LIMINE NO. 20 mikeh

05-15-96 Note: FILED: SUPPLEMENTAL AFFIDAVIT OF VENOY CHRISTOFFERSON mikeh

05-15-96 Note: FILED: STATE FARM'S MEMO IN OPPOSITION TO PLTFS' MOTION IN LIMINE NO. 18-EXCLUDE EVIDENCE RE: OLSON V VAN ORDER CASE tinaa

05-15-96	Note: FILED: PLTFS' MEMO IN OPPOSITION TO STATE FARM'S MOTION IN LIMINE FOR AN ORDER EXCLUDING EVIDENCE OF SPOLIATION OF EVIDENCE	tinaa
05-16-96	Note: FILED: PLTFS' OBJECTION TO STATE FARM'S SUPPLEMENTAL DESIGNATION OF WITNESSES	mikeh
05-16-96	Note: FILED: OBJECTION TO SUBPOENA DUCES TECUM	mikeh
05-16-96	Note: FILED: AFFIDAVIT	tinaa
05-17-96	Note: FILED: PLAINTIFFS' OBJECTION TO STATE FARM'S SUPPLEMENTAL DESIGNATION OF WITNESSES	melbar
05-17-96	Note: FILED: AFFIDAVIT OF GARY T. FYE DATED 4/29/96	mikeh
05-20-96	Note: FILED: MINUTE ENTRY-DEFT'S MOTION IN LIMINE TO EXCLUDE HANDBOOK IS DENIED. FURTHER HRG SET 5-21-96 9:30 AM.	melbar
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 10/24/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 10/25/95	mikeh

05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 10/26/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 10/27/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 10/31/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/1/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/2/95 (A.M.)	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/2/95 (P.M.)	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/7/95 (A.M.)	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/3/95 (P.M.)	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/7/95	mikeh

05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/8/95	mikeh
05-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 11/6/95	mikeh
05-22-96	Note: FILED: MINUTE ENTRY- DEFT'S MOTION FOR STAY, DENIED. MOTIONS TO RECONSIDER ARE DENIED. PTY'S TO PROVIDE TRL PLAN BY 5-23-96 5:00 PM, OBJ'S DUE 5-28-96. HRG SET 5-29-96 10:00 AM.	melbar
05-22-96	Note: FILED: TRANSCRIPT OF PROCEEDINGS (5-17-96)	melbar
05-28-96	Note: FILED: PLTFS' MOTION IN LIMINE NO. 21	mikeh
05-28-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 21	mikeh
05-28-96	Note: FILED: ORDER DENYING PLAINTIFFS' MOTION TO SET ASIDE JUDGE ROKICH'S PARTIAL SUMMARY JUDGMENT REGARDING DAMAGES	melbar
05-28-96	Note: FILED: ORDER DENYING STATE FARM'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE FROM PLAINTIFFS' WITNESSES PRATER AND FYE REGARDING STATE FARM'S PATTERN AND PRACTICES	melbar

05-28-96	Note: FILED: ORDER (RE HANDBOOK)	melbar
05-28-96	Note: FILED: ORDER GRANTING PLAINTIFFS' MOTION IN LIMINE NOS. 15, 16 AND 20 (TO EXCLUDE EVIDENCE REGARDING COLLUSION AND CONCOCTION)	melbar
05-28-96	Note: FILED: ORDER REGARDING EXCLUSION OF TESTIMONY OF INA DELONG	melbar
05-28-96	Note: FILED: ORDER REGARDING EVIDENCE OF OTHER CASES	melbar
05-28-96	Note: FILED: ORDER REGARDING STATE FARM'S MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT, REVERENCE TO, OR EVIDENCE OF DISCOVERY DISPUTES AND ORDERS	melbar
05-28-96	Note: FILED: ORDER REGARDING PLAINTIFFS SHARING OF THE RECOVERY PROCEEDS	melbar
05-28-96	Note: FILED: ORDER REGARDING TESTIMONY OF CALVIN THUR AND COMMISSION	melbar
05-28-96	Note: FILED: ORDER REGARDING EVIDENCE OF SPOLIATION OF EVIDENCE	melbar
05-28-96	Note: FILED: ORDER EXCLUDING TESTIMONIES OF IVIE, GLAUSER, AND THORNLEY	melbar

05-28-96	Note: FILED: ORDER DENYING VARIOUS MOTIONS OF STATE FARM TO EXCLUDE PLAINTIFFS' EVIDENCE	melbar
05-28-96	Note: FILED: ORDER REGARDING STATE FARM'S MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE SELECTION AND COMPENSATION OF STATE FARM'S CEO AND PRESIDENT, OFFICERS AND DIRECTORS	melbar
05-28-96	Note: FILED: ORDER DENYING DEFENDANTS' MOTION FOR STAY	melbar
05-28-96	Note: FILED: MOTION TO EXCLUDE FOR CAUSE ANY POTENTIAL JUROR WHO IS CURRENTLY INSURED BY STATE FARM	mikeh
05-28-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE FOR CAUSE ANY POTENTIAL JUROR WHO IS CURRENTLY INSURED BY STATE FARM	mikeh
05-28-96	Note: FILED: MOTION IN LIMINE TO LIMIT TESTIMONY OF WITNESSES PRATER, FYE AND DELONG RE STATEMENTS AS TO THE LAW AND LEGAL CONCLUSIONS	mikeh

05-28-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO LIMIT TESTIMONY OF WITNESSES PRATER, FYE AND DELONG RE STATEMENTS AS TO THE LAW AND LEGAL CONCLUSIONS	mikeh
05-28-96	Note: FILED: MOTION IN LIMINE TO EXCLUDE PREJUDICIAL REMARKS	mikeh
05-28-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE PREJUDICIAL REMARKS	mikeh
05-28-96	Note: FILED: TRIAL BRIEF REGARDING PUNITIVE DAMAGES	mikeh
05-29-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (MAY 21, 1996)	melbar
05-29-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (MAY 22, 1996)	melbar
05-29-96	Note: FILED: OBJECTIONS TO PLAINTIFFS' PROPOSED ORDER RE: EXCESS LIABILITY HANDBOOK	
05-29-96	Note: FILED: OBJECTION TO PLAINTIFFS' PROPOSED ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NOS. 15, 16 AND 20	melbar

05-29-96 Note: FILED: GENERAL OBJECTION TO PLAINTIFFS' PROPOSED ORDERS melbar

05-29-96 Note: FILED: STATE FARM'S REQUESTED JURY VOIR DIRE QUESTIONS melbar

05-30-96 Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 5-21-96 (ATTACH DECISION FROM SUPREME CT CASE, BMW) melbar

05-31-96 Note: FILED: PLAINTIFF'S OBJECTION TO DEFENDANT'S PROPOSED ORDER DENYING STATE FARM'S MOTION IN LIMINE REGARDING EXCESS LIABILITY HANDBOOK melbar

05-31-96 Note: FILED: PLAINTIFFS' OBJECTION TO DEFENDANT'S ORDER DENYING PLAINTIFFS' MOTIONS IN LIMINE NUMBERS 17, 18, AND 19 melbar

05-31-96 Note: FILED: PLAINTIFFS' OBJECTION TO DEFENDANT'S PROPOSED ORDERS REGARDING CALVIN THUR melbar

05-31-96 Note: FILED: CAMPBELL RESPONDENTS' MEMORANDUM IN OPPOSITION TO STATE FARM'S MOTION FOR STAY melbar

05-31-96 Note: FILED: CAMPBELL RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER STATE FARM'S PETITION FOR EXTRAORDINARY WRIT melbar

05-31-96 Note: FILED: MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE FOR CAUSE ANY POTENTIAL JUROR WHO IS CURRENTLY INSURED BY STATE FARM melbar

05-31-96 Note: FILED: DEFT'S IDENTIFICATION OF WITNESSES AND ANTICIPATED AREAS OF TESTIMONY mikeh

05-31-96 Note: FILED: PLAINTIFF'S OBJECTION TO DEFENDANTS PROPOSED ORDER GRANTING PLAINTIFFS' MOTION IN LIMINE NOS. 15, 16, AND 20 melbar

05-31-96 Note: FILED: PLAINTIFFS' OBJECTION TO STATE FARM'S PROPOSED ORDER REGARDING STATE FARMS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF NON-THIRD PARTY BI CLAIM HANDLING PRACTICES AND/OR PROCEDURES melbar

05-31-96 Note: FILED: PLAINTIFFS' OBJECTION TO STATE FARM'S ORDER DENYING PLAINTIFFS' MOTION TO SET ASIDE JUDGE ROKICH'S PARTIAL PARTIAL SUMMARY JUDGMENT REGARDING DAMAGES melbar

06-03-96 Note: FILED: FILED: ORDER DENYING STATE FARM'S MOTION IN LIMINE REGARDING EXCESS LIABILITY HANDBOOK (UNSIGNED)

06-03-96	Note: FILED: ORDER DENYING STATE FARM'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF CALVIN THUR (UNSIGNED)	melbar
06-03-96	Note: FILED: ORDER REGARDING STATE FARM'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF NON-THIRD PARTY BI CLAIM HANDLING PRACTICES AND/OR PROCEDURES (UNSIGNED)	melbar
06-03-96	Note: FILED: ORDER EXCLUDING STATE FARM'S PROPOSED WITNESSES GLAUSER, IVIE, AND THORNLEY FROM TESTIFYING (UNSIGNED)	melbar
06-03-96	Note: FILED: ORDER GRANTING PLAINTIFFS' MOTIONS IN LIMINE NOS. 15, 16, AND 20 (UNSIGNED)	melbar
06-03-96	Note: FILED: ORDER DENYING VARIOUS MOTIONS OF STATE FARM TO EXCLUDE PLAINTIFFS' EVIDENCE (UNSIGNED)	melbar
06-03-96	Note: FILED: TRIAL BRIEF REGARDING TESTIMONY OF EXPERT WITNESSES ON	mikeh
06-03-96	Note: ISSUES OF INTENT, WILLFULNESS AND RECKLESSNESS	mikeh
06-04-96	Note: FILED: FAXED-DEFENDANT'S SUGGESTION REGARDING TRIAL PLAN	melbar

06-04-96	Note: FILED: LETTER TO THE COURT RE JUROR QUESTIONNAIRE, ETC. DATED 6-3-96	melbar
06-04-96	Note: FILED: STATE FARM'S OBJECTION TO PLAINTIFF'S PROPOSED ORDER REGARDING EVIDENCE OF SPOILATION	melbar
06-04-96	Note: FILED: PLAINTIFFS' WITNESS LIST AND BRIEF DESCRIPTION OF TESTIMONY	melbar
06-04-96	Note: FILED: PRELIMINARY TRIAL PLAN OF DEFENDANT'S WITNESSES	melbar
06-04-96	Note: FILED: PRELIMINARY TRIAL PLAN OF PLAINTIFFS' WITNESSES	melbar
06-04-96	Note: FILED: FAXED-DEFENDANT'S SUGGESTION REGARDING TRIAL PLAN	melbar
06-04-96	Note: FILED: FAXED-SUPREME COURT ORDER DATED 5-31-96	melbar
06-04-96	Note: FILED: DEFENDANT'S OBJECTIONS TO PLAINTIFFS' PROPOSED ORDER DENYING VARIOUS MOTIONS OF STATE FARM TO EXCLUDE PLAINTIFFS EVIDENCE	melbar

06-04-96 Note: FILED: DEFENDANT'S OBJECTION TO PLAINTIFFS' PROPOSED ORDER DENYING DEFENDANT'S NOTION FOR STAY melbar

06-04-96 Note: FILED: DEFENDANT'S OBJECTION TO PLAINTIFFS' PROPOSED ORDER REGARDING EVIDENCE OF OTHER CASES melbar

06-04-96 Note: FILED: STATE FARM'S OBJECTIONS TO PLAINTIFFS' PROPOSED ORDER REGARDING STATE FARM'S MOTION IN LIMINE TO EXCLUDE ARGUMENT ABOUT, REFERENCE TO, OR EVIDENCE OF DISCOVERY DISPUTES AND ORDERS melbar

06-04-96 Note: FILED: DEFENDANT'S OBJECTION TO PLAINTIFF'S PROPOSED ORDER REGARDING STATE FARM'S MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING THE SELECTION AND COMPENSATION OF STATE FARM'S CEO AND PRESIDENT, OFFICERS AND DIRECTORS melbar

06-04-96 Note: FILED: DEFENDANT'S OBJECTIONS TO PLAINTIFFS' PROPOSED ORDER REGARDING TESTIMONY OF CALVIN THUR AND COMMISSION melbar

06-04-96 Note: FILED: GENERAL OBJECTION OF DEFENDANT TO ORDERS FILED MAY 28, 1996 melbar

06-04-96 Note: FILED: MINUTE ENTRY - 1ST DAY OF TRL, JURY SELECTION STILL IN PROGRESS, FURTHER TRL 6-5-96 10:00 AM. melbar

06-04-96 Note: FILED: MINUTE ENTRY- CT'S RULING ON DEFT'S LETTER OF 5-31-96. CC TO COUNSEL melbar

06-05-96 Note: FILED: MINUTE ENTRY- 2ND DAY OF TRL, JURY SELECTION STILL IN PROGRESS, FURTHER TRL 6-6-96 8:00 A.M. melbar

06-05-96 Note: FILED: LETTER TO JUDGE BOHLING FROM SUPREME COURT (ATTACH M.E.) melbar

06-06-96 Note: FILED: MINUTE ENTRY- JURY EMPANELLED, OPENING STMTS MADE. melbar

06-06-96 Note: FURTHER TRL 6-7-96 8:15 AM. melbar

06-07-96 Note: FILED: TRIAL BRIEF REGARDING NEW UTAH AUTHORITY INTERPRETING UTAH RULE OF EVIDENCE 404 mikeh

06-07-96 Note: FILED: MINUTE ENTRY- MINUTE ENTRY- FURTHER TRL CON'T TO 06-11-96 @ 8:00 A.M. melbar

06-10-96 Note: FILED: LETTER TO THE COURT FROM L. RICH HUMPHERYS, DATED 6-3-96 RE DESIG OF PORTIONS OF DEPOSITIONS, (ATTACH) melbar

06-10-96	Note: FILED: FAXED LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 5-31-96	melbar
06-10-96	Note: FILED: MEMORANDUM OF LAW REGARDING PROTECTIVE ORDERS FOR EXHIBITS ADMITTED OR REFERENCED AT TRIAL	melbar
06-10-96	Note: FILED: TRIAL BRIEF SETTING FORTH STANDARDS TO SET ASIDE OR MODIFY A STIPULATED PROTECTIVE ORDER	mikeh
06-11-96	Note: FILED: REPORTERS TRANSCRIPT OF PROCEEDINGS (5-29-96)	melbar
06-11-96	Note: FILED: MINUTE ENTRY- 3RD DAY OF TRL, FURTHER TRL CON'T TO 6-12-96 @ 8:00 AM.	melbar
06-12-96	Note: FILED: MINUTE ENTRY- 4TH DAY OF TRL, FURTHER TRL CON'T TO 6-13-96 @ 8:00 A.M.	melbar
06-13-96	Note: FILED: MINUTE ENTRY- 5TH DAY OF TRL, FURTHER TRL CON'T TO 6-14-96 @ 8:00 A.M. DEPO OF MILES JENSEN IS OPENED & PUB.	melbar
06-14-96	Note: FILED: AFFIDAVIT (RE DEPO OF DAVID W. SLAGLE)	susies
06-14-96	Note: FILED: AFFIDAVIT (RE DEPO OF STEPHEN B. NEBEKER)	susies

06-14-96	Note: FILED: STATEMENT REGARDING PLFS AUTHENTICATION DOCUMENTS	susies
06-14-96	Note: FILED: MINUTE ENTRY- 6TH DAY OF TRL, FURTHER TRL CON'T TO 6-15-96 @ 8:00 A.M. DEPO'S OF DONALD P. CAMPBELL, JOHN L. OSPITAL, & CURTIS B. CAMPBELL ARE OPENED & PUB.	melbar
06-18-96	Note: FILED: STATE FARM'S OBJECTION TO PLAINTIFFS' PROPOSED ORDER REGARDING EXCLUSION OF TESTIMONY OF INA DELONG	melbar
06-18-96	Note: FILED: TRIAL BRIEF REGARDING NEW UTAH AUTHORITY INTERPRETING UTAH RULE OF EVIDENCE 404	melbar
06-18-96	Note: FILED: MINUTE ENTRY- 7TH DAY OF TRL. DEPO OF JOHN W. CROWE OPENED & PUB. DEFT'S MOTION FOR MISTRIAL DENIED. FURTHER TRL CON'T TO 6-19-96 8:00 A.M.	melbar
06-18-96	Note: FILED: AMENDED MINUTE ENTRY OF 6-4-96 (CC TO COUNSEL)	melbar
06-19-96	Note: FILED: MINUTE ENTRY- 8TH DAY OF TRL. DEPO'S OF DR. HURST & BRUCE DAVIS ARE PUBLISH. FURTHER TRL CON'T TO 6-20-96 8:00 AM.	melbar

06-19-96	Note: FILED: DEPOSITION OF BRUCE A. DAVIS	melbar
06-20-96	Note: FILED: MINUTE ENTRY- 9TH DAY OF TRL. JUROR #2 DISM AS READ INTO RECORD. FURTHER TRL CON'T TO 6-21-96 8:00 A.M.	melbar
06-21-96	Note: FILED: MINUTE ENTRY- TRL CON'T TO 6-25-96, 8:00 A.M.	melbar
06-25-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 6-26-96 @ 8:00 AM. DEPO OF V. RAY SUMMERS IS OPENED & PUB.	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, SECOND DAY (9-20-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, THIRD DAY (9-21-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, FOURTH DAY (9-22-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, FIFTH DAY (9-23-96)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, SIXTH DAY (12-20-83)	melbar

06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, SEVENTH DAY (12-21-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, EIGHTH DAY (12-22-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, NINTH DAY (12-23-83)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, TENTH DAY (4-4-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 11 (5-9-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 12 (5-10-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 13 (5-11-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, 14TH DAY (5-15-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 15 (5-16-84)	melbar

06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 16 (5-17-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 17 (6-1-84)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 19 (4-9-86)	melbar
06-25-96	Note: FILED: (COPY) DEPOSITION OF V. RAY SUMMERS, VOL. 20 (11-13-86)	melbar
06-26-96	Note: FILED: TRIAL BRIEF REGARDING REBUTTAL EVIDENCE	melbar
06-26-96	Note: FILED: MINUTE ENTRY- TRL FURTHER CON'T TO 6-27-96 @ 8:00 A.M.	melbar
06-26-96	Note: DEPO OF INA MAY DELONG INTRODUCED.	melbar
06-27-96	Note: FILED: LETTER TO THE COURT FROM JURY MEMBERS (OF 6-27-96)	melbar
06-27-96	Note: FILED: MINUTE ENTRY- JURORS #'S 10 & 11 ARE SWITCHED (SEE M.E.)	melbar
06-27-96	Note: TRL TO CON'T TO 6-28-96 & TO BE HELD IN IWASAKI'S CT RM, THAT TRL CAN BE BY VIDEO & ALSO BE REPORTED.	melbar

06-28-96	Note: FILED: MINUTE ENTRY- TRL HELD VIA VIDEO & REPORTER. DEPO OF S.	melbar
06-28-96	Note: BIRD PUBLISHED. FURTHER TRIAL CON'T TO 7-2-96 @ 8:00A.M.	melbar
06-28-96	Note: FILED: DEPOSITION OF SAMANTHA BIRD (2-19-94) VOL 1	melbar
06-28-96	Note: FILED: DEPOSITION OF SAMANTHA BIRD (2-25-94) VOL 2	melbar
07-02-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-3-96 8:00A.M.	melbar
07-03-96	Note: FILED: MINUTE ENTRY- TRL HELD. FURTHER TRL CON'T TO 7-5-96, 8:00	melbar
07-05-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-9-96, 8:00	melbar
07-08-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 4, 1996)	melbar
07-08-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 5, 1996)	melbar
07-08-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 6, 1996)	melbar

07-08-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 7, 1996)	melbar
07-09-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-10-96 @ 8:00 AM. DEPO OF MANUEL MENDOZA PUBLISHED, DEPO OF ARCH H. GEDDES PUBLISHED. PLTF RESTED.	melbar
07-10-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-11-96 8:00	melbar
07-11-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-12-96 8:00	melbar
07-11-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 12, 1996)	melbar
07-11-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 11, 1996)	melbar
07-11-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 13, 1996)	melbar
07-11-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (JUNE 14, 1996)	melbar
07-12-96	Note: FILED: LETTER TO RICH FROM PAUL M. BELNAP, DATED 7-10-96 RE COPY	melbar

07-12-96	Note: OF AUTO CLAIMS MANUAL	melbar
07-12-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-16-96 8:00	melbar
07-16-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRL CON'T TO 7-17-96 8:00	melbar
07-17-96	Note: FILED: MINUTE ENTRY- TRL HELD, DEPO'S OF LELAND NORMAN, RICHARD F. REYNOLDS, AND ROSA SMITH ARE OPENED & PUB. FURTHER TRL IS CON'T TO 7-18-96 @ 8:00 A.M.	melbar
07-18-96	Note: FILED: DEFENDANT'S DESIGNATION OF TESTIMONY OF GEORGE JEPSON	melbar
07-18-96	Note: FILED: MINUTE ENTRY- TRL HELD, DEPO OF ROBERT DEAN NOXON PUBLISHED. FURTHER TRL CON'T TO 7-19-96 @ 8:00 A.M.	melbar
07-19-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRIAL CON'T TO 7-23-96 @ 8:00 AM.	melbar
07-22-96	Note: FILED: LETTER TO MR. BROWN FROM DIXIE GOMM (DEPOMAX) RE WITNESS CORRECTIONS TO DEPO OF GARR OVARD	melbar
07-23-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (7-19-96)	melbar

07-23-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (7-20-96)	melbar
07-23-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (7-21-96)	melbar
07-23-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS (7-18-96)	melbar
07-23-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRJ CON'T TO 7-25-96 8:00	melbar
07-25-96	Note: FILED: LETTER TO SCHULTZ FROM DIXIE GOMM (DEPOMAX) RE WITNESS CORRECTIONS TO DEPO OF JOHN ROBERTS, M.D.	melbar
07-25-96	Note: FILED: MINUTE ENTRY- TRL HELD, FURTHER TRJ CON'T TO 7-26-96 @ 8:00 AM. DEPO OF HAROLD C. YANCEY, PUBLISHED.	melbar
07-26-96	Note: FILED: PROFFER OF EXCLUDED TESTIMONY OF RICHARD K. GLAUSER	melbar
07-26-96	Note: FILED: PROFFER OF EXCLUDED TESTIMONY OF R. PHILLIPS IVIE	melbar
07-26-96	Note: FILED: PROFFER OF TESTIMONY OF EXCLUDED WITNESS DAVID W. SLAGLE	melbar

07-26-96	Note: FILED: PROFFER OF EXCLUDED TESTIMONY OF WENDELL E. BENNETT	melbar
07-26-96	Note: FILED: PROFFER OF TESTIMONY OF EXCLUDED WITNESS RICHARD H. THORNLEY	melbar
07-26-96	Note: FILED: PLAINTIFF'S REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM	melbar
07-26-96	Note: FILED: MINUTE ENTRY- BOTH SIDES REST. FURTHER TRJ CON'T TO 7-31-96 @ 7:50 A.M. HRGS FOR COUNSEL & CT SET 7-29-96 @ 10:45A & 7-30-96 A 8:00 A.M. DEPO'S OF GEORGE ELLIS JEPSON, DAVID MARK WELLS, & MICHAEL J. ARNOLD, ARE PUBLISHED.	melbar
07-26-96	Note: FILED: DEFENDANT'S JURY INSTRUCTIONS	melbar
07-29-96	Note: FILED: MINUTE ENTRY- RE MO'S ON DIRECTED VERDICTS, (SEE M.E.)	melbar
07-30-96	Note: FILED: DEFENDANT'S REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM	melbar
07-30-96	Note: FILED: PLAINTIFF'S REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM	melbar

07-30-96	Note: FILED: STIPULATED JURY INSTRUCTIONS	melbar
07-30-96	Note: FILED: MEMORANDUM REGARDING PECUNIARY LOSS OF INEZ CAMPBELL	melbar
07-30-96	Note: FILED: MINUTE ENTRY-HRG HELD ON JURY INSTRUC/ SPECIAL VERDICT.	melbar
07-30-96	Note: TRJ SET 7-31-96 @ 7:50 A.M.	melbar
07-31-96	Note: FILED: JURY INSTRUCTIONS (CT'S COPY)	melbar
07-31-96	Note: FILED: PLAINTIFF'S SUPPLEMENTAL SPECIAL VERDICT AND JURY INSTRUCTIONS	melbar
07-31-96	Note: FILED: MINUTE ENTRY-ALTERNATE JURORS EXCUSED FROM FURTHER DELIBERATION. JURY FINDS IN FAVOR OF PLTFS. SEE SPECIAL VERDICT. JURY EXCUSED.	melbar
07-31-96	Note: FILED: EXHIBIT SHEETS (3)	melbar
07-31-96	Note: FILED: JURY LIST	melbar
07-31-96	Note: FILED: SPECIAL VERDICT	melbar
07-31-96	Note: FILED: AFFIDAVIT OF MARK L. KNUTSON	melbar
07-31-96	Note: FILED: JURY NOTES	melbar
08-02-96	Note: FILED: OBJECTION TO PLFS NOTICE OF HEARING	susies

08-05-96	Note: FILED: LETTER TO COUNSEL RE: DEPO OF JOHN W. CROWE	susies
08-06-96	Note: FILED: LETTER TO JUDGE BOHLING FROM PAUL M. BELNAP, DATED 8-6-96	melbar
08-06-96	Note: FILED: LETTER TO JUDGE BOHLING FROM PAUL M. BELNAP, DATED 8-2-96	melbar
08-08-96	JUDGMENT #1 ENTERED	
08-08-96	Note: FILED: OFFER OF PROOF RE TESTIMONY IN REBUTTAL TO TESTIMONY OF INA DELONG AND STEVE PRATER	melbar
08-08-96	Note: FILED: DOCUMENT FROM AZ. SUPERIOR COURT (7-21-95)	melbar
08-08-96	Note: FILED: COVER LETTER TO GLENN FROM ROGER P. CHRISTENSEN, DATED 7-25-96 (ATTACH)	melbar
08-08-96	Note: FILED: DOCUMENT FROM AZ. (AFFIDAVIT OF JOHN L. TULLY)	melbar
08-08-96	Note: FILED: STIPULATION	karenos
08-08-96	Note: FILED: JUDGMENT AGAINST STATE FARM MUTUAL INSURANCE COMPANY	melbar
08-08-96	Note: CASE JUDGMENT IS TRIAL JUDGMENT	melbar

08-08-96	Note: JUDGMENT AGAINST STATE FARM MUTUAL AUTO INSURANCE CO	alicew
08-08-96	Note: 2209458 GENERAL DAMAGES FOR CURTIS CAMPBELL 1400000.00	alicew
08-08-96	Note: DATE: 8-9-96 GENERAL DAMAGES FOR INEZ CAMPBELL 1200000.00	alicew
08-08-96	Note: TIME: 8:02 AM SPECIAL DAMAGES 2086.75	alicew
08-08-96	Note: NOTE: SEE FILE PUNITIVE DAMAGES	alicew
08-08-96	Note: 145000000.00	alicew
08-08-96	Note: FILED: LETTER TO THE COURT FROM PAUL BELNAP, DATED 8-6-96	melbar
08-09-96	Note: FILED: AFFIDAVIT OF RICHARD VANDERBOSCH	melbar
08-09-96	Note: FILED: ORDER	melbar
08-13-96	Note: FILED: MOTION FOR RELIEF	marleneb
08-13-96	Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 8-2-96	melbar
08-14-96	Note: FILED: NOTICE OF ENTRY OF JUDGMENT	mikeh

08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 6/25/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 6/26/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 6/27/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 6/28/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/2/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/3/96	mikeh
08-16-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/5/96	mikeh
08-19-96	Note: FILED: MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL OR REMITTITUR	mikeh
08-28-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/9/96	mikeh

08-28-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/10/96	mikeh
08-28-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/11/96	mikeh
08-28-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/12/96	mikeh
08-29-96	Note: FILED: PLFS REPLY MEMO REGARDING THEIR MOTION FOR RELIEF	susies
08-29-96	Note: FILED: PLFS OBJECTION TO DEFS PROPOSED ORDERS IN LIMINE REGARDING IDENTITY OF TRIAL EXHIBITS, IDENTITY OF VIDEO EVIDENCE AND IDENTITY OF DEPOSITION TESTIMONY	susies
08-29-96	Note: FILED: PLFS MEMO IN SUPPORT OF ITS OBJECTION TO DEFS PROPOSED ORDERS, ETC	susies
08-29-96	Note: FILED: OBJECTION TO DEFS PROPOSED ORDER REGARDING DEFS MOTION TO EXCLUDE TESTIMONY OF INA DELONG	susies
08-29-96	Note: FILED: PLFS MEMO IN SUPPORT OF THEIR OBJECTION TO DEFS PROPOSED ORDER, ETC	susies

09-05-96	Note: FILED: ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION TO EXCLUDE THE TESTIMONY OF INA DELONG	melbar
09-05-96	Note: FILED: ORDER GRANTING DEFENDANT'S MOTION IN LIMINE TO IDENTIFY VIDEO EVIDENCE	melbar
09-05-96	Note: FILED: ORDER GRANTING DEFENDANT'S MOTION IN LIMINE TO IDENTIFY TRIAL EXHIBITS	melbar
09-05-96	Note: FILED: ORDER GRANTING DEFENDANT'S MOTION IN LIMINE TO IDENTIFY AND DESIGNATE DEPOSITION TESTIMONY	melbar
09-06-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/16/96	mikeh
09-06-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/17/96	mikeh
09-06-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/18/96	mikeh
09-06-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/19/96	mikeh
09-09-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/23/96	mikeh

09-09-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/25/96	mikeh
09-09-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/26/96	mikeh
09-11-96	Note: FILED: REQUEST FOR ORAL ARGUMENT	susies
09-11-96	Note: FILED: NOTICE TO SUBMIT FOR DECISION	susies
09-18-96	Note: FILED: LETTER TO MR. HUMPHERYS FROM NANCY DOLAN, DATED 9-1-96	melbar
09-20-96	Note: FILED: LETTER TO JUDGE BOHLING FROM PAUL M. BELNAP DATED 9-13-96.	melbar
09-25-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS DATED 1-5-96	melbar
09-25-96	Note: FILED: AFFIDAVIT OF BRUCE CALLIS	melbar
09-25-96	Note: FILED: AFFIDAVIT OF ROGER LEHMAN	melbar
09-26-96	Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 9-13-96	melbar
10-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/30/96	mikeh

10-21-96	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, 7/31/96	mikeh
10-31-96	Note: FILED: LETTER TO THE COURT FROM RICH HUMPHERYS, DATED 10-28-96	melbar
11-13-96	Note: FILED: STIPULATION	melbar
11-13-96	Note: FILED: ORDER (THAT DEFT HAVE TO 11-22-96 TO SUBMIT MEMORANDA IN SUPPORT OF POST-TRL MOTIONS)	melbar
11-14-96	Note: FILED: LETTER TO THE COURT FROM STUART H. SCHULTZ, DATED 11-1-96 (ATTACH)	melbar
11-19-96	Note: FILED: ORDER	melbar
11-22-96	Note: FILED: MEMORANDUM IN SUPPORT OF STATE FARM'S MOTION FOR JUDGMENT	mikeh
11-22-96	Note: NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL OR REMITTITUR	mikeh
11-25-96	Note: FILED: LETTER TO JUDGE BOHLING FROM ROGER P. CHRISTENSEN, DATED 11-19-96	melbar
12-31-96	Note: FILED: MEMORANDUM IN SUPPORT OF MOTION TO DETERMINE AMOUNT OF ATTORNEYS FEES AND LITIGATION EXPENSES	mikeh

12-31-96	Note: FILED: MOTION TO DETERMINE AMOUNT OF ATTORNEYS FEES AND LITIGATION EXPENSES	mikeh
01-08-97	Note: FILED: REPORTER'S TRANSCRIPT OF PROCEEDINGS, AUGUST 8, 1996	sophieo
01-10-97	Note: FILED: MEMO IN OPPOSITION TO PLAS' MOTION TO DETERMINE AMOUNT OF ATTORNEYS FEES AND LITIGATION EXPENSES	amybw
02-06-97	Note: FILED: LETTER TO PAUL FROM ROGER P. CHRISTENSEN, DATED 2-5-97.	melbar
02-06-97	Note: (ATTACH LETTER TO MS. DOLAN)	melbar
02-07-97	Note: FILED: PLTFS' REPLY TO STATE FARM'S OPPOSITION TO PLTFS' MOTION TO DETERMINE AMOUNT OF ATTORNEYS FEES AND LITIGATION EXPENSES	mikeh
02-12-97	Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 2-10-97	melbar
02-19-97	Note: FILED: LETTER TO THE COURT FROM ROGER P. CHRISTENSEN, DATED 12-12-97.	melbar
02-27-97	Note: FILED: PLTF'S MEMORANDUM RESPONDING TO POINT VIII OF DEFT'S	mikeh

02-27-97	Note: MEMORANDUM- DEFT'S MOTION FOR NEW TRIAL OR REMITTITUR REGARDING THE COMPENSATORY DAMAGE AWARDS	mikeh
02-27-97	Note: FILED: OBJECTION TO CONSIDERATION OF RICE AND BELNAP AFFIDAVITS IN CONNECTION WITH MOTION FOR NEW TRIAL AND OBJECTION TO IMPROPER STATEMENTS IN AFFIDAVITS	mikeh
02-27-97	Note: FILED: PLTFS' RESPONSES TO PART VII OF DEFT'S MEMORANDUM-MOTION FOR NEW TRIAL BASED ON JURORS' POST-TRIAL DECISION NOT TO DISCUSS CASE	mikeh
02-27-97	Note: FILED: PLTFS' RESPONSE TO POINT VI- MOTION FOR NEW TRIAL FOR FAILURE TO FURTHER BIFURCATE	mikeh
02-27-97	Note: FILED: PLTFS' MEMORANDUM RESPONDING TO POINT III OF DEFT'S MEMORANDUM - MOTION FOR JUDGMENT NOV ON INEZ'S BAD FAITH CLAIMS	mikeh
02-27-97	Note: FILED: MEMORANDUM IN RESPONSE TO PART V OF DEFT'S MEMORANDUM REGARDING ALLEGED TRIAL ERRORS	mikeh

02-28-97 Note: FILED: PLTFS' RESPONSE TO POINT IV OF DEFT'S MEMORANDUM – DEFT'S MOTION FOR JUDGMENT NOV ON THE PUNITIVE DAMAGE CLAIM mikeh

02-28-97 Note: FILED: PLTFS' RESPONSE TO POINTS I AND II OF DEFT'S MEMORANDUM-DEFT'S MOTION FOR J.N.O.V. RE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND FRAUD CLAIMS mikeh

03-05-97 Note: FILED: PLTFS' MOTION FOR EXTENSION FOR FILING BALANCE OF RESPONSE TO DEFT'S POST-TRIAL MOTIONS mikeh

03-05-97 Note: FILED: MEMORANDUM IN SUPPORT OF PLTFS' MOTION FOR EXTENSION FOR FILING BALANCE OF RESPONSE TO DEFT'S POST-TRIAL MOTIONS mikeh

03-05-97 Note: FILED: STATE FARM'S RESPONSE TO PLTFS' REPLY ON THE MOTION TO DETERMINE AMOUNT OF ATTORNEYS' FEES & LITIGATION EXPENSES mikeh

03-21-97 Note: FILED: PLTFS' STATEMENT OF FACTS AND MEMORANDUM REGARDING PUNITIVE DAMAGE ISSUES mikeh

04-02-97 Note: FILED: LETTER FROM ROGER P. CHRISTENSEN mikeh

05-20-97 Note: FILED: MINUTE ENTRY- CASE SET FOR PRE HRG 8-12-97 2:00 PM/OR TENTATIVE 8-5-97 @ 8:30 AM. & FOR MO HRG 8-26-97 @ 9:30 AM. & TENTATIVELY FOR 8-27-97 @ 9:00 AM IF NEEDED @ IF AVAIL. HRG ON ATTY'S FEES SET 9-5-97 @ 9:30 AM. MR. BELNAP TO PREPARE ORDER. DEFT GIVEN EXTRA (30) DAY CON'T TO REPLY (TO END OF JUNE). melbar

05-30-97 Note: FILED: LETTER TO THE COURT FROM ROGER P. CHRISTENSEN, DATED 4-3-97 (ATTACH) melbar

06-26-97 Note: FILED: DEFT'S RESPONSE TO PLTF'S OBJECTION TO CONSIDERATION OF RICE AND BELNAP AFFIDAVITS IN CONNECTION WITH MOTION FOR NEW TRIAL AND OBJECTION TO STATEMENTS IN AFFIDAVIT matellew

06-26-97 Note: FILED: DEFT'S REPLY MEMO IN SUPPORT OF STATE FARM'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL OR REMITTITUR matellew

07-23-97 Note: FILED: MINUTE ENTRY- HRG DATES RESET, PRE-HRG SET 8-26-97, 9:30 melbar

07-23-97 Note: MO HRG SET 12-18-97, & HRG ON ATTY'S FEES SET 1-9-98 2:00 melbar

07-23-97 Note: FILED: LETTER TO THE COURT FROM L. RICH HUMPHERYS, DATED 7-22-97 melbar

09-08-97 Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 8-6-97 melbar

09-08-97 Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 8-19-97 melbar

09-08-97 Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 8-19-97 melbar

09-08-97 Note: (ATTACH) melbar

09-08-97 Note: FILED: LETTER TO THE COURT FROM L. RICH HUMPHERYS, DATED 8-22-97 melbar

09-08-97 Note: FILED: LETTER TO THE COURT FROM PAUL M. BELNAP, DATED 8-25-97 melbar

09-10-97 Note: FILED: MINUTE ENTRY- THE COURT REC'D CORRESPONDENCE FROM PTY'S melbar

09-10-97 Note: FILED: MINUTE ENTRY- DEFT'S PROPOSED SCHED ORDER & DEFT'S LETTER QUESTIONING A PROVISION OF ORDER ON DEFTS RIGHT TO A SURREPLY BRIEF, CT ENTERS ORDER. CC TO COUNSEL melbar

09-10-97 Note: FILED: MINUTE ENTRY- CT HAS REVIEWED PTY'S CORRESPONDENCE ON PROPOSED AGENDA FOR ARG ON POST TRL ISSUES TO BE HELD 12-18 & 12-19 AND ON 1-9-98. CT TO FOLLOW DEFT'S PROPOSED AGENDA PLUS POINT 7 AS REQUESTED BY DEFT. CC TO PTY'S melbar

09-12-97 Note: FILED: PLNTFS SUR REPLY MEMO terriv

09-26-97 Note: FILED: MOTION AND MEMO IN SUPPORT OF MOTION TO STRIKE SUR REPLY MEMO terriv

10-02-97 Note: FILED: MINUTE ENTRY- MOTION TO STRIKE PLTF'S SURREPLY MEMO IS DENIED. PLTF'S MO TO ADD LAWYERS PRO HAC VICE IS GRNTD, PLTF COUNSEL TO PREPARE ORDER. melbar

10-20-97 Note: FILED: OBJECTION TO STATE FARMS REFERENCE TO AND/OR THE COURTS CONSIDERATION OF INFORMATION WHICH WAS NOT ADMITTED AND WAS NOT BEFORE THE FINDER OF FACT IN THIS CASE terriv

10-20-97 Note: FILED: MEMO IN SUPPORT OF PLNTFS OBJECTION TO STATE FARMS REFERENCE TO AND/OR THE COURTS CONSIDERATION OF INFORMATION terriv

10-20-97 Note: REFERENCE TO AND/OR THE COURTS CONSIDERATION OF INFORMATION WHICH WAS NOT ADMITTED AND WAS NOT BEFORE THE FINDER OF FACT IN THIS CASE terriv

11-14-97 Note: FILED: OBJECTION TO AND MEMO IN RESPONSE TO PLNTFS SUR REPLY TO PLNTFS SURREPLY MEMO terriv

12-11-97 Filed: MEMORANDUM IN RESPONSE TO PLAINTIFF'S OBJECTION TO STATE FARM'S REFERENCE TO AND/OR THE COURT'S CONSIDERATION OF INFORMATION WHICH WAS NOT ADMITTED AND WAS NOT A FACT IN THIS CASE melbar

01-07-98 Filed: SECOND AFFIDAVIT OF L. RICH HUMPHERYS devonyag

01-07-98 Filed: PLA'S ELECTION REGARDING REMITTITURS devonyag

01-09-98 Minute Entry - Minutes for Law & Motion
Judge: WILLIAM B. BOHLING
Clerk: melbar
Reporter: FREE LANCE COURT REPORTER PRESENT
Plaintiffs Attorney(s):
ROGER P. CHRISTENSEN
L. RICH HUMPHERYS
Defendant's Attorney(s):
PAUL M. BELNAP
STUART H. SCHULTZ

On record Hearing is before the court on Plaintiff's motion to determine amount of Attorney's fees and litigation expenses, and replies thereto by Defendant.
The court, after hearing argument of counsel, and having read the memoranda as submitted, so orders: Plaintiff is granted compensatory damages pursuant to remittitur. The application for punitive damages is denied. Plaintiffs are granted all litigation expenses as submitted. Plaintiffs counsel to prepare the order on hearing today.
Further hearing is set January 30, 1998 at 8:00 A.M. melbar

01-20-98 Filed: Transcript of proceedings; First day of oral arguments and Court's rulings on: motions for Jnov and on alleged trial errors dated 12/18/97 luannh

01-20-98 Filed: Transcript of Second day of oral arguments and Court's rulings on: motions for new trial or remittitur on punitive damages award dated 12/19/97 luannh

03-09-98 Filed: (Def, St. Farm's) Objections to Plaintiffs' Proposed Judgment and Order Re: Attorney's Fees and Litigation Expenses beckiy

03-09-98 Filed: State Farm's Motion to Reconsider Award of Litigation Expenses beckiy

03-11-98 Judge BOHLING assigned. janm

03-20-98 Filed: Letter to Rich and Roger from Stuart H. Schultz, dated 2-24-98 melbar

03-20-98 Filed: Letter to Rich and Roger
from Stuart H. Schultz, dated 3-11-98 melbar

04-28-98 Minute Entry - Minutes for Law & Motion
Judge: WILLIAM B. BOHLING
Clerk: melbar
PRESENT
Plaintiffs Attorney(s):
ROGER P. CHRISTENSEN
L. RICH HUMPHERYS
Defendant's Attorney(s):
PAUL M. BELNAP
STUART H. SCHULTZ
Video
Tape Number: 8:40 A.M.
HEARING
TAPE: 8:40 A.M. On record Before the Court is defendant's requested Rule 16 management conference.

Discussion of counsel is heard before the Court. The Court after hearing counsel regarding the proposed orders and the objections thereto, having read the memoranda as submitted, requests counsel to prepare the orders and the findings of facts.

Multiple orders and findings are to be prepared as previously requested. Hearing is set July 23, 1998 at 8:30 A.M. (second place setting), or on August 11, 1998 at 8:30 A.M. Mr. Humpherys is to prepare the Order on hearing this date. melbar

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Denying State Farm's Motion for New Trial Based on the Court's Failure to Trifurcate the Trial beckiy

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Denying State Farm's Motion for Judgment Notwithstanding the Verdict Re: Fraud beckiy

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Re: Defendant's Motion for Judgment Notwithstanding the Verdict Re: Inez Campbell beckiy

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Denying State Farm's Motion for Judgment Notwithstanding the Verdict Re: Intentional Infliction of Emotional Distress beckiy

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Re: State Farm's Motion for a New Trial or Remittitur Re: the Compensatory Damage Awards beckiy

06-02-98 Filed: (Def's) Objections to Plaintiffs' Proposed Order Re: Defendant's Motion for A New Trial Based on Post-Trial Jury Conduct beckiy

06-19-98 Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (May 26, 1994) beckiy

06-19-98 Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (July 20, 1995) beckiy

06-19-98 Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (March 25, 1996) beckiy

06-19-98 Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (April 8, 1996) beckiy

06-19-98	Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (April 15, 1996)	beckiy
06-19-98	Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS: (May 6, 1996)	beckiy
07-07-98	Filed: (Def's) Objections to Plaintiffs' Proposed Court's Findings, Conclusions, and Order Regarding Punitive Damages and Evidentiary Rulings	beckiy
07-15-98	Filed: Defendant's Submission of Comparative Copies of Plaintiffs' Proposed Orders and Defendant's Objections	beckiy
07-15-98	Filed: Plaintiffs' General Response to State Farm's Objection to the Proposed Orders	beckiy
07-15-98	Filed: Plaintiff's response to Defendant's Objections Re: Proposed Order Re: State Farm's Motion for New Trial or Remittitur Re: the Compensatory Damage Awards	beckiy
07-15-98	Filed: Plf's Response to Def's Objection to Plf's Proposed Order Denying State Farm's Motion for Judgment NOV Re: Intentional Infliction of Emotional Distress	beckiy
07-15-98	Filed: Plaintiffs' Response to Def's Objections to Proposed Order Denying State Farm's Motion Re: Fraud Verdict	beckiy

07-15-98	Filed: Plaintiffs' Response to State Farm's Objections to Plfs' Proposed Order Re: Def's Motion for Judgment Notwithstanding the Verdict Re: Inez Campbell	beckiy
07-15-98	Filed: Plfs' Response to State Farm's Objections to Plaintiff's Proposed Order Denying State Farm's Motion for New Trial Based on the Court's Failure to Trifurcate the Trial	beckiy
07-15-98	Filed: Memorandum in Opposition to State Farm's Motion to Reconsider Award of Litigation Fees and Expenses	beckiy
07-15-98	Filed: Plfs' Response to State Farm's Objections to Plfs' Proposed Judgment and Order Re: Attorney's Fees and Litigation Expenses; and Plfs' Objections to State Farm's Proposed Order	beckiy
07-15-98	Filed: Plfs' Response to State Farm's Objections to Proposed Court's Findings, Conclusions and Order Re: Punitive Damages and Evidentiary Rulings	beckiy
07-16-98	Filed: Plaintiff's Response to State Farm's Objections to Plaintiff's Proposed Order Re: Defendant's Motion for a New Trial Based on Post-Trial Jury Conduct	beckiy
07-17-98	Filed: Objections to Plaintiffs' Revised Order Re: Defendant's Motion for a New Trial Based on Jury Conduct	beckiy

07-20-98 Filed: Reply Memorandum in Support of Motion to Reconsider Award of Litigation Expenses beckiy

07-23-98 Filed order: Order Regarding State Farm's Motion to Reconsider Award of Litigation Expenses
Judge wbohling
Signed July 23, 1998 melbar

07-23-98 Minute Entry - Minutes for Law & Motion
Judge: WILLIAM B. BOHLING
Clerk: melbar
PRESENT
Plaintiff's Attorney(s):
ROGER P. CHRISTENSEN
KARRA PORTER
KENNETH CHESEBRO
Defendant's Attorney(s):
STUART H. SCHULTZ
Video
Tape Number: 8:12 A.M.
HEARING
TAPE: 8:12 A.M. On record Hearing on objections to the form of order is before the Court. The objections are argued before the Court. Orders are entered as stipulated to, and as read into the record. Further hearing is continued to 7/31/98 at 10:00 A.M. HEARING is scheduled.
Date: 07/31/1998
Time: 10:00 a.m.
Location: Fourth Floor - W42
THIRD DISTRICT COURT
450 SOUTH STATE
SLC,UT 84111-1860
before Judge WILLIAM B. BOHLING melbar

07-31-98 Minute Entry – Minutes for Law & Motion
Judge: WILLIAM B. BOHLING
Clerk: melbar
PRESENT
Plaintiffs Attorney(s):
ROGER P. CHRISTENSEN
L. RICH HUMPHERYS
Defendant's Attorney(s):
PAUL M. BELNAP
STUART H. SCHULTZ
Video
Tape Number: 12:01 P.M.
HEARING
TAPE: 12:01 P.M. On record Hearing is before the Court on objections to the form of the order. Further hearing is continued to be heard on 8-3-98 at 8:30 A.M., to finalize the Order as stipulated to by counsel.
HEARING TO FINALIZE ORDER is scheduled.
Date: 08/03/1998
Time: 08:30 a.m.
Location: Fourth Floor - W42
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860
before Judge WILLIAM B. BOHLING melbar

08-03-98 Filed: Order Regarding defendant's Objection to Plaintiffs' Surreply Memorandum beckiy

08-03-98 Filed: Order Regarding Objections to Post-Trial Evidence beckiy

08-03-98	Filed: Order Regarding State Farm's Motion for A New Trial or Remittitur Regarding the Compensatory Damage Awards	beckiy
08-03-98	Filed: Order Regarding Defendant's Motion for Judgment Notwithstanding the Verdict Re: Inez Campbell	beckiy
08-03-98	Filed: Order Denying Defendant's Motion for New Trial Based on the Court's Failure to Trifurcate the Trial	beckiy
08-03-98	Filed: Order Denying State Farm's Motions For Judgment N.O.V. and New Trial Regarding Fraud	beckiy
08-03-98	Filed: Order Denying State Farm's Motions for Judgment N.O.V. and New Trial Regarding Intentional Infliction of Emotional Distress	beckiy
08-03-98	Filed: Order Regarding Defendant's Motion for a New Trial Based on Jury Conduct	beckiy
08-03-98	Filed order: Court's Findings Conclusions and Order regarding punitive damages and evidentiary rulings Judge wbohling Signed August 03, 1998	sallyk
09-01-98	Filed: Notice of Appeal	brandyk
09-01-98	Filed: Notice of Appeal	melbar
09-01-98	Filed: Undertaking (Bond on Appeal)	beckiy

09-04-98	Note: SENT: CERT/COPY OF NOTICE OF APPEAL TO THE SUPREME COURT	lauriec
09-11-98	Filed: Notice of Cross-Appeal	beckiy
09-16-98	Filed: Letter from Supreme Court. Notice of Appeal Received on 09/9/98 Case #981564	brandyk
09-18-98	Filed: REPORTER'S TRANSCRIPT OF PROCEEDINGS, JANUARY 9, 1998	sophieo
09-21-98	Filed: Reporter's Transcript of Proceedings, Hearing, July 23, 1998	sophieo
09-21-98	Filed: Reporter's Transcript of Proceedings, Hearing, July 31, 1998	sophieo
09-21-98	Filed: Reporter's Transcript of Proceedings, Hearing, August 3, 1998	sophieo
10-16-98	Filed: Reporter's Transcript of Proceedings (7-20-94)	melbar

RELEVANT DOCKET ENTRIES FROM UTAH SUPREME COURT

Title: Campbell v. State Farm Ins.

Docket No: 981564 Docket Date: 09/09/1998

Agency: THIRD DISTRICT, SALT LAKE Case: 890905231

Status: Opinion Filed

Date	Action	Disposition	Date
09/09/1998	Notice of Appeal Filed		
09/10/1998	Transcript Request Received		
09/22/1998	Docketing Statement Filed		
10/05/1998	Cross-Appellant's Docketing St		
10/06/1998	Notice of Cross Appeal		
12/17/1998	Transcript Filed		
02/22/1999	Record Index Filed		
02/23/1999	Set Briefing schedule		
03/09/1999	Supplemental Record Index Filed		

Date	Action	Disposition	Date
06/03/1999	Mtn for Admission Pro Hac Vice	Granted	06/04/1999
06/03/1999	Misc Motion	Granted	06/11/1999
06/03/1999	Motion-Supplement Record	Granted	06/10/1999
06/04/1999	Misc Motion	Granted	06/11/1999
06/04/1999	Appellant, X-Appellee Brief Filed		
06/04/1999	Admission Pro Hac Vice	Granted	
06/07/1999	Misc Motion	Granted	06/10/1999
06/10/1999	Misc Motion	Granted	
06/10/1999	Appellant, X-Appellee Brief Filed		
06/10/1999	Motion-Supplement Record	Granted	
06/11/1999	Supplemental Record Index Filed		
06/11/1999	Misc Motion	Granted	
09/03/1999	Appellee, X-Appellant Brief Filed		

Date	Action	Disposition	Date
09/10/1999	Misc Motion	Granted	09/17/1999
09/17/1999	Misc Motion	Granted	
11/17/1999	Apt/X-Appellee Response Brief		
02/01/2000	Appellee, X-Appt. Reply Brief		
02/08/2000	Appellee, X-Appt. Reply Brief		
02/08/2000	Miscellaneous		
03/24/2000	Misc. Letter		
03/27/2000	Recusal Notice Sent		
03/30/2000	Misc Motion	Granted	04/06/2000
03/30/2000	Memorandum of Points & Authority		
04/06/2000	Misc Motion	Granted	
04/12/2000	Record Filed - Civil		
05/11/2000	Amended Brief		
05/11/2000	Misc. Letter		
05/11/2000	Misc. Letter		
05/12/2000	Misc. Letter		
05/19/2000	Miscellaneous		

Date	Action	Disposition	Date
05/24/2000	Submitted on Oral Argument		
05/25/2000	Miscellaneous		
06/02/2000	Applint Supp Authority to Brief		
05/16/2001	Misc Motion	Denied	05/25/2001
05/21/2001	Response to Motion		
05/25/2001	Misc Motion	Denied	
06/25/2001	Applint Supp Authority to Brief		
08/14/2001	Applint Supp Authority to Brief		
10/19/2001	Opinion Filed		
10/24/2001	Extension of Time for Rehearing	Granted	10/29/2001
10/24/2001	Motion-Accept Overlength Brief		
10/25/2001	Misc. Letter		
10/30/2001	Misc. Letter		
11/16/2001	Petition for Rehearing	Denied	12/04/2001
12/03/2001	Miscellaneous		
12/04/2001	Petition for Rehearing Denied		

Date	Action	Disposition	Date
12/10/2001	Motion-Stay Remittitur	Granted	12/20/2001
12/14/2001	Remittitur Stayed		
12/18/2001	Response		
12/19/2001	Miscellaneous		
12/20/2001	Motion-Stay Remittitur	Granted	
02/20/2002	Misc Motion		
03/07/2002	Response to Motion		
03/13/2002	US Supreme Court Writ Cert Filed		
03/15/2002	Misc. Letter		
04/11/2002	Calendared for Law & Motion		
04/15/2002	Motion Deferred		
06/04/2002	Misc. Letter		
06/06/2002	Misc. Letter		
12/31/2099	Remittitur Stayed	Due	06/20/2002

JUDGMENT AGAINST STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY DATED AUGUST 8, 1996, R. 7719-23

IN THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY
STATE OF UTAH

Civil No. 890905231

Judge William B. Bohling

CURTIS B. CAMPBELL and
INEZ PREECE CAMPBELL,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

JUDGMENT AGAINST STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

The above matter came before the court on the 4th day of June, 1996, for the second bifurcated trial. In this trial each of the plaintiffs appeared personally and were represented by their attorneys L. Rich Humpherys and Roger P. Christensen; defendant State Farm Mutual Automobile Insurance Company appeared through its representative Craig Kingman and was represented by its attorneys Glenn C. Hanni, Paul M. Belnap, Stuart H. Schultz, and others. A jury of eight people was regularly empaneled and sworn to try said action. Witnesses on the part of plaintiffs and defendant

were sworn and examined, exhibits were introduced into evidence and all evidence was submitted by the parties. After approximately two months of trial and having considered the evidence, arguments of counsel and instructions of the court, the jury retired to consider the verdict and after due deliberation, returned its special verdict and answered the interrogatories as follows:

1. It has previously been determined that State Farm breached its duty of good faith and fair dealing toward the Campbells. Do you find from a preponderance of the evidence that such breaches were a proximate cause of damages to:

ANSWER:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

2. It has previously been determined that State Farm breached its fiduciary duties toward the Campbells. Do you find from a preponderance of the evidence that such breach was a proximate cause of damages to:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

3. Do you find by a preponderance of the evidence that State Farm committed intentional infliction of emotional distress upon:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

4. If you answered question no. 3 "yes," was such conduct approximate cause of damages to:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

5. Do you find by clear and convincing evidence that State Farm committed fraud upon:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

6. If you answered question no. 5 "yes," do you find by clear and convincing evidence that such conduct was a proximate cause of out-of-pocket loss to:

Curtis Campbell	Yes X	No ____
Inez Campbell	Yes X	No ____

7. Based upon a preponderance of the evidence, what if any general compensatory damages do you award the plaintiffs?

Curtis Campbell	$ 1,400,000.00
Inez Campbell	$ 1,200,000.00

8. Do you find by clear and convincing evidence that State Farm's conduct was willful and malicious, or that such conduct was done with a knowing and reckless indifference toward and disregard of the Campbell's rights and well being.

Yes X

No ____

If you answer yes to question 8, answer the following question:

9. Based upon clear and convincing evidence what, if any, punitive damages do you award against State Farm?

Punitive Damages: $ 145,000,000.00

The parties stipulated that the total pecuniary loss suffered by plaintiffs was $911.25. The court ruled that if the jury answered "yes" to question number 6 above, the court would add the $911.25 amount to the judgment. Plaintiffs are entitled to prejudgment interest thereon at the rate of 10% per annum pursuant to § 78-27-44, UCA, as amended. The court finds that the date of occurrence for purposes of computing interest should be September 20, 1983, the date of the excess verdict. Prejudgment interest has therefore accrued in the amount of $1,175.50.

Based upon the above findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff Curtis Campbell shall have judgment against defendant for general compensatory damages of $1,400,000.00, and Inez Campbell shall have judgment against defendant for general

compensatory damages of $1,200,000.00. Plaintiffs shall have judgment against defendant for special compensatory damages of $2,086.75. In addition, plaintiffs shall have judgment against the defendant for punitive damages in the amount of $145,000,000.00. These judgments shall bear interest at the legal rate from the date hereof until paid.

The court shall hereafter address the amount of attorneys fees and litigation expenses, if any, that plaintiffs are entitled to recover in addition to the above judgment.

DATED this 8 day of August, 1996.

BY THE COURT:

William B. Bohling
District Judge

EXCERPTS OF TRANSCRIPT OF PRETRIAL HEARINGS, MAY 21, 1996

[Vol. R. 10253, commencing at p. 33]

PRE-TRIAL HEARINGS, MAY 21, 1996

* * *

MR. BELNAP: Now, as part of the process of this, Your Honor, we had hand-delivered over to you this morning the BMW case. Did you receive that from us?

THE COURT: If there was a hand delivery it didn't reach me.

MR. BELNAP: Okay.

MR. HUMPHERYS: We've not seen a copy.

MR. BELNAP: We faxed that to you this morning, as well.

MR. HUMPHERYS: We apparently didn't get it either.

MR. SCHULTZ: We'll get you a copy of the case. I don't think that got faxed, but the letter did.

MR. BELNAP: Could I just inquire, off the record, of your clerk, Your Honor, if that hand delivery came over and we could track that down?

THE COURT: I'd be happy to recess and just go take a look out there.

MR. BELNAP: Maybe if you could.

MR. SCHULTZ: Maybe we ought to just go run a copy of that so that counsel has a copy of the case. I don't think they have it.

[34] (Brief recess.)

THE COURT: I have it, it was clearly given to me.

MR. HUMPHERYS: Was that the second copy that you gave to him? Maybe we can just look off that one.

MR. SCHULTZ: That's the only copy.

MR. BELNAP: Your Honor, the BMW case, which I'm

certain you will want to look at and study, is a ruling from the United States Supreme Court that came out yesterday on the issue of punitive damages. And what the court held in a state court action, from the state of Alabama, was that -- And maybe I ought to let Stuart speak to this. He's got the decision in front of him, and if I could --

THE COURT: There was a report in the Salt Lake Tribune about the case this morning.

MR. SCHULTZ: Your Honor, I have not read every word of this yet, but let me just tell you what I have gotten through so far, because we do think that it has some bearing, here.

This was a case where a doctor purchased a BMW in Alabama for about $40,000. And sometime after he purchased it, a body shop person told him that he could tell from looking at it, that there had been some repainting work done on it. It was supposed to be a [35] brand new vehicle.

And he, then, later brought suit against BMW, claiming that they had a nationwide practice of doing some touch-up repair work on new vehicles that were damaged in transit, and then not disclosing that to their dealers, and, in turn, not disclosing it to their customers.

And so he sued BMW for the damage to his car, or the lost value of his car, plus punitive damages. And part of his claim was that this was a nationwide practice by BMW. And BMW, in fact, did acknowledge that that was something they did nationwide, and there was evidence that the doctor put in about nine, just slightly less than 1,000 instances that he had been able to discover where that had happened throughout the entire nation.

And he then asked, he then claimed that the value of his vehicle was reduced by about $4,000 because of the touch-up paint work, and asked for $4 million in punitive damages because he multiplied the $4,000 by the thousand other instances where he said that it happened.

And the jury returned a verdict of exactly what he asked for. $4,000 in compensatory damages, and $4 million in punitive damages.

It went up to the Alabama Supreme Court, and [36] the Alabama Supreme Court took the position that it was improper for the trial judge to have allowed the jury to consider what had happened in cases outside of Alabama. And the issue that came up was that, well, this -- Well, let me go back.

BMW's practice, Your Honor, was that if the damage that was caused in transit was less than 3 percent of the value of the vehicle, then they would fix it the way they did, and not disclose it. And if it was more than that, then what they did was they would just leave the vehicle on the dealer's lot for several months and then sell it as a used vehicle.

So in any event, the Alabama court was confronted, the Supreme Court was confronted with this, and they felt that it was not proper for the jury to have been allowed to consider instances where this may have happened outside of Alabama. There was evidence of fourteen times that it happened in Alabama.

And they basically said, "Well, you've got a situation where there are different laws in different states, and whether or not this has to be disclosed or doesn't have to be disclosed varies."

They said, "There's no specific evidence in this case that," as I recall there were twenty-five states that had some kind of either statutory, or maybe [37] it was common law, but some kind of direct law on this issue of disclosure, and they said, "You haven't presented any evidence that, in these other states, what happened was unlawful."

And so we are judging BMW's conduct in this case by what the law is in Alabama, and what goes on in Alabama, and therefore it was improper to allow them to get into this whole nationwide scheme, or practice.

And there is a quote, here, where they speak in terms of the sovereignty of the states and the law of comity, and that one state cannot punish someone because of the laws of that state for something that happened in another state.

And there is a quote, here, that said -- it's on page 9 of this decision, in the second column under the heading number 25 -- where they say, "The Alabama Supreme Court, therefore, properly eschewed reliance on BMW's out-of-state conduct and based its remitted award solely on conduct that occurred within Alabama."

Now, what happened was the Alabama Supreme Court affirmed the trial court's judgment that this was reprehensive conduct, and that it was the basis for punitive award. But they lowered it from four million to two million.

But the U.S. Supreme Court then said, "The [38] award must be analyzed in the light of the same conduct, with consideration given only to the interests of Alabama consumers, rather than those of the entire nation. When the scope of the interest in punishment and deterrence that an Alabama court may appropriately consider is properly limited, it is apparent, for reasons that we shall now address, that this award is grossly excessive."

Now, there are other things in the case, and I don't want to go beyond that, but the point I guess I'm making is this, Your Honor. We have a problem, here, because if we take this proposition, then if you want to go into nationwide patterns and practices, it seems to me that it gets into the situation we were talking about yesterday, or Friday -- maybe it was -- that you have to consider the laws of each of those states, how those may differ from Utah's.

You get into a geometrically larger issue, because they're saying it has to be the same conduct. And even if the claim is that what happened in other states is unlawful, you have to look at those

individually, at the very least, to determine that, and it would just expand the scope, or the time of this trial way beyond a month.

And specifically, with respect to this case, [39] we know that the law of the state of Utah is that the insurance company in a third-party context, BI context, does not owe a duty to the claimants. There is no duty owed to the claimants, and that's under Pixton and other cases.

Yet we are being confronted with allegations that State Farm has a nationwide pattern and practice of low-balling in third-party cases. Well, in Utah, now, I don't know if it's different in other states, but in Utah we do not owe a duty to third-party claimants, and yet we are being charged with doing wrongful conduct in this case for not settling this claim that should have been settled. But the nationwide argument that their witnesses want to bring in is that we have done wrongful conduct when we do settle cases.

THE COURT: Mr. Schultz, let me interrupt you.

MR. SCHULTZ: I will leave that at that, Your Honor. It's just another issue that needs to be addressed.

THE COURT: I was made aware of this case. I regret -- Well, I don't think it would make any difference had I read it this morning or not. Clearly my clerk had placed it on my desk, and I just overlooked it. I did notice an article in the Salt Lake Tribune.

[40] I think this case may have some significance in this case and some of the rulings the court's made, I felt that when I looked at the short report on it.

It seems to me, though, that the way to deal with this is to give the plaintiffs a chance to read the case, and then, after they've had a chance to examine it, then we have a hearing and say, "All right, now, what does this case do, if anything, to the rulings we have, and the way the case is presented?"

MR. BELNAP: We agree with that, Your Honor.

MR. SCHULTZ: We appreciate that.

MR. BELNAP: We wanted to get this in front of you as soon as we can so that the Supreme Court, on our petition, has

the benefit of the fact that we've put it in front of the court, Your Honor is aware of it, and we've got all the issues on the table.

THE COURT: But counsel, what I'm telling you is my rulings were made prior to the time this case came out.

MR. BELNAP: I understand.

THE COURT: And if you're going to try to obtain a writ of mandamus against the court without the court having the chance to look at a case that's been since decided that may affect it, I find that somewhat troublesome.

[41] MR. BELNAP: That's not the basis, and I want to disabuse you, if you think that that's what we're saying on the writ of mandamus. It is not, Your Honor. But I didn't want, as an officer of the court, to run up to the Supreme Court, when there's authority that Your Honor ought to consider, and maybe hadn't considered, I wanted that on the table.

THE COURT: I can assure you I hadn't considered the case. I don't obtain those kind of powers, Mr. Belnap.

MR. BELNAP: I'm not trying to be sarcastic, Judge. And I know you're not with me. But we just wanted to get it up as soon as we could to Your Honor, so that if there's going to be any change in the rulings, so be it.

If not, the court has had the opportunity to consider in the rulings that have been made, and we can then go up on our petitions without having any baggage of some other authority that may not have been considered.

* * *

[45] MR. BELNAP: Thank you. Your Honor, on the issue of spoliation, we have submitted two memos under tab 8 and tab 24 on that issue. The first memo under tab 8 is entitled State Farm's memorandum in support of motion in limine for order excluding evidence of spoliation.

Tab 24 is memorandum in support of motion in limine for order excluding evidence of document destruction in general,

and specifically Samantha Byrd memorandum, Elaine Rigler, Buried Alive, Dan Cochran letter that's part of the current document retention program in State Farm.

[46] We've reviewed with the court in these memoranda the case law that applies, and I'll discuss that in a minute. I want to talk about factually where we see this case as being, in terms of documents.

We produced in 1989, I have a box here of the manuals, six of them that were produced to the plaintiffs. When the request was received, these were collected and have been in our office's possession since that time.

As Your Honor is aware, after the lawsuit was filed in 1989, some discovery commenced initially, and then a motion for summary judgment was filed and the case was dismissed, and we maintained these records.

It was not until 1993 that a review of the records that we had took place by Mr. Humphrey's, after some discussions took place about protective orders and that kind of an issue.

In the course of discovery, it has been indicated from all of the witnesses at State Farm, that there has been a program that was in place before this accident ever happened, before this lawsuit was ever filed, that State Farm does not have a practice of keeping, when a new section of a manual comes out, of keeping that. And that only current materials are kept.

In a case that the plaintiffs have cited the [47] court to of Schlossberg in 1988, the deposition was taken of Frank Comella at State Farm. And in that case they asked Mr. Comella to produce a copy of Article 14 from the claims superintendent's manual. And that's an article that you've heard reference to a number of times in this case.

And they talked about that manual, and Mr. Comella said, "I will have to go and see if our history file has any information in it on this point." And he indicated in that deposition, and in a deposition that Mr. Humphrey's took from him, that -- well,

excuse me, I'm getting ahead of myself. In the Schlossberg case he indicated that there was a history file on some manuals.

In the deposition that Mr. Humphrey's took of him in this case in April, he indicated that he would rely on his testimony in that case, but that he didn't have an independent recollection, sitting there, that there was a history manual of the claims superintendent's manual, but he recalled there was one of the auto claim manual.

He explained in these depositions that these history files were a paper file that had been kept, and that people from time to time were pulling things out of them, they were in some state of disarray, that they did exist. [48] We acknowledge that, to some extent, there was a history file on the auto claims manual and the claims superintendent's manual in 1988.

In that case, a judgment was entered against State Farm in 1989, in January. This case, this bad faith case was filed against State Farm in September or August of 1989. Mr. Comella indicated to Mr. Humphrey's that he has gone back and checked to see if there is a history file that currently exists at State Farm on any of the manuals, and he has indicated there is not a history file any longer. And he could not state in his deposition when those materials had been done away with, or had been discarded.

Now, where we find ourselves at this point, Your Honor, is obviously we have gone through the Phase 1 of the bifurcated case. And Mr. Christensen and Mr. Humphrey's, in Phase 1, represented to the court that they needed to put in the manuals, these manuals, and the other materials that they submitted to the court in the preliminary motions in limine and other hearings before this case went to the jury and that they needed these manuals so that they could present to the jury what the standard was internally at State Farm. And that these manuals, from these manuals they could establish the standard of State Farm.

[49] Their witnesses, Prater, Fye, Krogue, all of the experts, DeLong, Thur, have testified, and have relied upon the materials

from these manuals, and that Mr. Fye, Mr. Prater already had from other cases.

Mr. Fye has testified in this court, and he has testified by deposition that he has 700,000 pages of State Farm documents. And other witnesses have indicated the same. And they have all indicated, to a person, that they have the documents from which they can render opinions against State Farm on their alleged bad acts pattern and practice testimony that they want to put in front of the jury.

Now, we submitted to the plaintiff in this case -- and this is under tab 25 in our loose leaf, Your Honor, a set of interrogatories and requests for admissions to the plaintiff which were submitted back in March. And these requests had attached to them -- If I can approach the bench, Your Honor --

THE COURT: All right.

MR. BELNAP: Under tab 25, these requests had attached to them documents that our office produced to the plaintiffs. And they specifically list the date of the document, the date it was produced, the Bates stamp number, the category the document is, and the title of the document.

[50] THE COURT: Okay.

MR. BELNAP: And we produced thousands of pages of documents to the plaintiff in this case, and we submitted a simple request for admission, asking them to admit that these are the documents they had received from the defendant.

And what we got back was a half-baked answer saying, "We can't tell, this isn't clear enough to us if we've gotten these or not." And so they sent us back their own list of documents, that is absolutely different than this, and done in a different format.

We then asked, specific to this spoliation issue, "Put a check mark by each of these documents which you had in your possession already at the time these were produced." Second interrogatory, "Put an X next to the document if this was already in the possession of your consultants or experts when you asked

it to be produced." Then we asked, "Specifically give us the category and description of documents that you will claim is relevant to your case, and which was destroyed, and for which a spoliation instruction should be given."

We then asked, "If you claim the defendant has destroyed documents that are relevant, list if the document's relied upon by the plaintiff and is available [51] to the plaintiff through another source," i.e., their experts." Or, if it's unavailable, describe for us the document, the category, the subject matter, the identity, and how it's relevant to the issues and claims made by the plaintiff in this case."

These interrogatories were not answered. We filed a motion to compel, we noticed that up, we received an answer from Mr. Humpherys' office on Friday that does not answer the questions.

And the relevancy of this discovery goes to the heart of the cases which I want to talk to the court about, and that is they've already said, and they've already presented to the jury, "This is State Farm's practice, is State Farm liable or not in terms of a substantial likelihood and unreasonableness?" Which was found against State Farm in the first phase. There's already been liability found from these alleged standards that are set forth in the manuals they presented.

So we then go to the basis of the case law that talk about the fact that, number one, this doctrine has not been adopted in Utah. And so a determination needs to be made by this court, as a threshold matter, is this a doctrine that would be adopted by the courts of this state?

[52] Secondly, we then have to look at whether or not the elements of spoliation have been met. And the plaintiff has the burden of proof on this issue, on the issue of spoliation, because of the prejudicial effect of this evidence. And this court, Your Honor has already indicated, and held, with respect to this subject, that this is highly prejudicial, and more prejudicial than probative

when the issue was brought up before Your Honor in the first phase. And this court has recognized the prejudicial effect of this kind of evidence to which the plaintiffs bear the burden that they should get this type of instruction.

The second thing that's clear from the case law that we have cited to the court in our memorandums, is that the evidence of spoliation must be relevant. And the plaintiffs must affirmatively establish the existence and the content of the alleged destroyed documents to meet that relevancy standard. Now, they have argued, "Well how can we do that if we don't have the destroyed document? How are we supposed to know what it says?"

Your Honor, expert witness after fact witness after other witness in this case for the plaintiffs have relied upon a core set of documents. Mr. Humphrey's alleges that we have not authenticated, and I suppose [53] that, as advocates, every effort has to be made to paint the other side improperly, but I got on the phone with him last Thursday, we received, in three sendings, 3,000 pages of documents, asking us to authenticate them as exhibits. And they came during a month's period of time, and we have had less than a month from then, from the last submittal, to finish that.

And I told him, and I walked him through the Bates stamp numbers of those documents, the ones that we knew right then we could not authenticate. And I told him that we would have him the final information, and it's relatively few that we are not going to be able to authenticate, and I gave him those Bates stamp numbers and said we would have the process finished this week.

Now, we've been in hearings that have obviously taken me away from that, but we still intend to meet that commitment.

But the fact of the matter is, they have a large pool of documents, they have them available, they've got the thousands of pages we've produced, they've got the evidence that they have given us to authenticate, saying, "These are going to be our

trial exhibits," and the showing that is required under these cases as to the relevancy of the alleged unavailable or destroyed material simply cannot be met.

[54] And the cases require that the plaintiff establish that the documentation would support the claims that they're making, in case after case. And that the specific indication that the information in the lists either proved or would prove petitioners' contention, citing from page 8 of our brief, and cases cited therein.

The courts that have looked at this issue have said that if you're dealing with an anciliary issue, where the alleged destroyed materials do not relate to the crux of the parties' case, but to a collateral issue, the commentators have opined that evidence of spoliation should not be admitted. Likewise, evidence of spoliation which is offered to prove the credibility of the alleged spoilator should not be admitted.

Now, in this case, the plaintiffs have got what they need to prove. They've proved in the first phase liability, they've submitted documents in this case that they want to use as exhibits. Mr. Fye and Mr. Prater already have their opinions, they've set them forth, they've got documents they're relying on.

What, at the heart of this claim, is being attempted, here, is to paint with a black brush State Farm because it has adopted a practice that [55] the plaintiffs don't agree with, that they don't think is right, that they think will inflame a jury when they talk about it, and further, under their current programs they've adopted a records management program that includes, company-wide, now, a records program that they want to indicate is further evidence up to this date of this bad intent on the part of State Farm, and its bad acts.

THE COURT: Mr. Belnap, there's one aspect of this that I think you need to address that's, to at least let you know where I'm coming from. If I understand correctly, the plaintiffs are going to argue that there was some order from State Farm to destroy quite a wide range of materials that would have included

documents that were under request for production in 1990 when this thing happened.

Now, if that's -- I mean that's part of what I'm reading in their briefs. If, even if it's true that they, by virtue of this, what I've referred to as this cottage industry of consultants and experts that have managed to obtain copies of the materials that State Farm has so vigilantly sought to destroy over a period of time under their policies, even if those are available, in the punitive damage case, in the case seeking to challenge and suggest that the basis for [56] punitive damages are the policies that State Farm has engaged in which have been to make it difficult pursuing claims against them, isn't that still a basis for spoliation evidence? Even if they have the documents?

MR. BELNAP: Your Honor, it is our position that it's not. The spoliation cases go to the issue of whether or not the party has been precluded from being able to put on their case from not having the document.

THE COURT: So you're saying you believe the cases would hold that if State Farm were successful in getting rid of every document, and it's clear that that was their intent, to frustrate claims being brought against them, and if the documents are found somewhere, that that evidence is just irrelevant to a trier of fact on the issue of punitives?

MR. BELNAP: Well, part of that relates to a motion that Stuart's going to speak to that I think Your Honor wanted us to handle in tandem, and that is litigation practices. Because it goes to the issue of whether or not that is a subject that is handled by the court through the rules of procedure, sanctions, other tools that this court has to control litigation.

And if you turn that over to the jury, where do you draw lines? How do you instruct them? How do you take the hat off and give them the hat of being the [57] court that operates under the rules of procedure and has Rule 37 powers and other powers to control those things? That's where we think that that issue is

to be controlled by this court on a case-by-case basis, and not with the painting of a brush to make a party look as a bad actor. There's got to be some relevance if you're looking at a spoliation instruction, and the inference that that brings with it.

Now, I guess, in addition, Your Honor -- not I guess -- but the fact of the matter is, this jury needs to look at and frame their decisions in terms of the conduct against, that State Farm should be weighed against what they allege to be done in this case and the handling of this case, and not nationwide, et cetera, and we've argued that before.

But this court has indicated that if a company had some years later decided to engage a document retention program and knock out a bunch of old stuff as necessarily indicating an intent to destroy evidence, the implication of allowing an instruction and allowing that kind of testimony is so, in my mind, damning, that I'm very reluctant to do it.

And we understand the position of the court that you've said that, and the reason is, is because it is so highly prejudicial in terms of the probative aspect [58] of it, when they've got the documents they need, they've got the experts that have the opinions, they've got the witnesses that have been, Your Honor has indicated they'll be allowed to call. So when we deal with the collateral issue, it's our position that this should not come in.

In addition, Your Honor, however that is sorted out, the cases are absolute that there has to be some proof of the specific relevant evidence as a prerequisite to the admission of evidence of spoliation, and how that has made it so that they can't proceed, and they need to describe what that evidence is, and what it would have shown.

This gets -- I'd like to then move into another aspect of our concern. As we have looked at this case, Your Honor, and we respect that in the court's attempt to schedule matters, a month has been set aside, eight trial days a side for the division of the

time in this case, with the parties being docked in their time for cross examination.

As we have looked at and considered, in fairness to our client, our ability to put on a defense, it's very simple to say, with a broad stroke of the brush, that, "State Farm is a bad person, because in 1990 they had a meeting where employees said, 'Get rid [59] of your old stuff, even though you don't use it anyway, your old claims school minutes, your old materials, get rid of it.' "

Or if it comes in that there was a history manual in '88, and that a decision was made to toss out the history manual because it was incomplete, or it wasn't kept up to date, or for whatever reason, then that puts State Farm in a position, time-wise, like all of these other issues that we've talked about, where several days have to be spent putting on to the jury, "What is our records retention program? What is our records management program? Why was it adopted? Why did we do it?"

It can't be done through just one witness in terms of explaining that to the jury. And it's highly prejudicial in our ability to meet these things in the timing that we've been given.

So I come back, Your Honor, on page 11 of our brief, under tab 24, in the case that we've cited there, and say, "Where is the causal relationship of damage in this case to the plaintiffs between the alleged destruction and the inability to prove their lawsuit?" And it does not exist.

When we look at the evidence from Samantha Byrd, when she says in her testimony that she was asked [60] to have her people throw this old stuff away, and she indicated that, "We don't use it, or we don't use this stuff anyway," the jury is going to be left with the proposition that is collateral, that is not relevant to the heart of the claims, that is highly prejudicial and inflammatory, and is going to take a substantial amount of time for State Farm to attempt to meet, to attempt to explain, to attempt to rebut.

Where it's used a current program, used a Buried Alive video tape that was commercially produced, and the jury sees all this, and they're taken off down a path that we believe this court, in its decision on the merits, should not give a spoliation instruction, or in weighing it in terms of its prejudicial effect versus probative value, should not give a spoliation instruction.

And at a minimum, if you're inclined that you believe that that should take place, we believe Your Honor should require the plaintiffs, under the case law, to step forward and answer these very simple interrogatories that were asked, to specify what it is they claim they need to have that they don't have, and how that inhibits their proof in this case. Where they already have the manuals that they've relied on, that they say show all these bad acts of State Farm in the [61] excess manual that Your Honor has let in, in Article 14, Article 11, Article 12, the auto claims manual they refer to, et cetera, et cetera.

Thank you, Your Honor. I'd like to --

MR. SCHULTZ: Do you want me to address that other issue?

THE COURT: I think that might be helpful, Mr. Schultz.

MR. SCHULTZ: This is specifically our motion to exclude evidence of discovery disputes and orders, and it was tab number 13, Your Honor, in our book.

Let me start out, first, by saying that we believe that this issue should be taken care of by your decision not to set aside Judge Rokich's partial summary judgment regarding damages. One of the parts of that summary judgment, Your Honor, was that the plaintiffs may not recover any damages for emotional distress for the prosecution of this particular case.

And so what we are faced with, essentially, both with what Mr. Belnap talked about and these discovery disputes, is these are issues and evidence that relates to the prosecution of this very case, which that partial summary judgement ruled could not be a basis for recovering damages.

The second point is, in one of the memos that [62] plaintiffs filed, I think it's the one for exclusion of this so-called public relations evidence, they made a very important point, and that was they said, "The threshold issue on punitive damages is the conduct of State Farm towards the Campbells." And that conduct relates to what happened in the handling of the underlying case, Your Honor.

Their claim is fraud in the inducement, to start out with, that State Farm never intended to provide the benefits of the policy, even back when Campbells first bought the policy. They're claiming fraud in how that case was handled, the failures to disclose bad evidence, the failures to instruct Campbell about the full extent of the risks. The claim is intentional infliction of emotional distress based on the fact that there was a failure to provide an adequate defense, or a failure to adequately investigate and interpret and evaluate, and a failure to settle.

Now, those things all go to how that case was handled as to the Campbells. And that's what they end, and then their other claim that they would have to prove to get punitive damages, aside from any intentional tort, would be to establish that State Farm's failure to settle the case was done either willfully or maliciously or in reckless, knowing and reckless disregard of the [63] Campbells' best interests.

Those things all go to that case, and that, by their own acknowledgement, is the threshold issue that they have to be able to prove in order to get a finding, even a finding of liability for punitive damages.

Now, when you combine that with the partial summary judgment, evidence of how this case, or the litigation handling of this case, simply is not relevant to those issues. And it can't -- It's an attempt to boot strap themselves into a punitive damage case by arguing about things that have happened in the handling of this case, which is an, obviously, a very adversarial relationship, where the parties have to have an opportunity to represent their best interests, their clients' best interest to the fullest extent.

And if it becomes a situation where evidence of how this particular litigation was handled comes before this jury, we're not only getting into irrelevant materials, but we are getting into disputes that are, by rule, by rules of civil procedure, to be handled by the judge, which Your Honor has done. You've handled discovery disputes, you've entered orders, you've even sanctioned State Farm, a[illegible] that's the way the rules are designed to handle this. And we have complied with your [64] orders to the very best of our abilities to find documents, to produce witnesses, and that's just part of the litigation process.

And to allow that to become part of the evidence in this case would force attorneys to become witnesses, to have to explain the litigation tactics, the reasons, the background, the procedure and the foundation for what had happened. It would allow, frankly, for improper comment by the court on the evidence, because, in effect, if a discovery dispute became part of the evidence, and the outcome of that dispute, the order entered by the court became part of the evidence, it would, in effect, give the jury the court's comment on the very claim that the plaintiffs are trying to make, which would be totally improper, and it would be highly prejudicial to, it could be either one or both of the parties.

And because of all those reasons, if for no other reason under Rule 403, these kinds of disputes that go on all the time during litigation simply cannot become part of the evidence.

We have cited a couple of cases in our brief, Your Honor, where the court's found that that kind of information is not to come in before a jury. And I found another case, Your Honor, that I didn't cite, but [65] it's a California appellate court decision, and I just want to read a comment that the court made, here.

This was a case where an insurance company at first denied an uninsured motorist claim on coverage grounds, when it turned it over to its counsel, its lawyer found a case that was right on point, and said, "You've got to pay it."

Anyway, they then got into, and they did pay it, and then they got into a bad faith claim. And the plaintiff wanted to put into evidence the insurance company's company appellate pleadings to try and discredit the insurance And the trial court allowed that, and the court said, "No, you can't do that."

And one of the comments they made here was --

HUMPHERYS: Can we have a cite?

MR. SCHULTZ: I'm sorry, it's 199 California Appellate 3rd, 1192, 245 California Reporter, 518, and the name of the case is Nies, N-I-E-S, versus National Automobile and Casualty Insurance Company.

MR. HUMPHERYS: What's the year?

MR. SCHULTZ: 1988. And the review denied. This is the comment I wanted to read. It says, "National had an absolute right to defend against plaintiff's claim. The right necessarily included the right to litigate the correctness of its original [66] position, conceding the coverage was controlled by a single court of appeal decision."

And I guess what I'm trying to say, Your Honor, is when we get into litigation, the judgments were paid, thereafter Campbells brought this suit. State Farm felt strongly that there was no basis for that case, largely because they had paid the judgments in full, and that position was initially approved, and summary judgment entered.

It was later reversed, and then you got back into this highly expanded institutional case that was not part of the evidence when it first went up on appeal, the original decision dismissing the case.

At that point, State Farm had an absolute right to defend itself, it had to be able to defend itself, and it had to take those positions that it felt were in its best interests regarding relevancy of documents, whether institutional evidence was even allowed to come in under the facts of this case.

And to allow all of that, those disputes to become part of the evidence, here, would not only be prejudicial, but I think it would be highly confusing to the jury, too, when what we're really talking about is what happened to the Campbells as the threshold point. Thank you.

[67] THE COURT: Thank you.

MR. HUMPHERYS: Your Honor, let me just outline how we would propose addressing this. Let me respond quickly to the request, the discovery request from the defendant to the plaintiffs, address factually that issue.

Mr. Christensen will address the spoliation issues, and I will address the issue of the admissibility of what has transpired in the course of the bad faith litigation.

As it pertains to counsel's comment regarding the requested information, at the end of March of this year, State Farm made requests for admissions. You've received an index of that. And then they made -- Which we timely responded to, and explained that, on pages 3 to 14 of that index, many of the documents which they are requesting that we admit as to the time, when they were delivered to us by State Farm, did not have the year on it, or a date that could be identified. So we made the objection that it was impossible for us to admit or deny on those that are undesignated.

We never kept track of the dates and times when they gave them to us. I'll give a good example. Last week when I was over at counsel's office to pick up copies of financial statements, or PP&Rs and so forth, [68] they had it printed on the bottom of the pages the date 5-1-96, and yet that was the first time that I have seen them over in their office, which was May, well, a week or so later.

We never kept track of when they were delivered to us or when they weren't, and we have seen numerous occasions where the date that's corresponded with their list did not correspond with the date that we actually got them, or when they were produced to us.

MR. BELNAP: The interrogatory doesn't ask you to admit to the date. Just the document.

MR. CHRISTENSEN: Your Honor, could I interject, here? We sat here politely while they make their argument, Mr. Belnap insists on interrupting ours. I think we're entitled to the same courtesy.

MR. BELNAP: I apologize, Your Honor, but this has happened both ways, and I'll sit down and stay sat down.

THE COURT: All right.

MR. HUMPHERYS: Well, my understanding, Your Honor, in reviewing the requests that they do request that we admit regarding the time. The timing doesn't -- Let me see if I can phrase it this way. Mr. Belnap makes a good point. I'm not trying to raise the timing issue to discuss when they were produced and when we [69] actually saw them and that type of thing.

But what they are requesting in their interrogatories is that we put a check by them at the time when we knew that we had the documents in our possession, at the time they produced them to us. Or what documents we did have at any given time period when they had them and produced them to us.

So the time, in terms of when I actually saw them based upon the date that's at the bottom may not be the issue, but the issue is, we have to now respond to their interrogatories based on the time when we received them. Did our experts, or did we have copies of them when they produced them to us? and so forth. And so the timing does become very important.

And so we responded to their request for admissions saying, "We did not keep track of the time when we got documents, either from our experts, we've consulted with our experts and they did not keep track of the times when they obtained the documents, and we didn't keep track of the time when they produced documents to us."

So it was almost impossible for us to go through, and literally thousands of documents, and try and pinpoint the time when we had them or didn't have them, versus when they produced them and didn't produce [70] them.

We made a good faith effort to explain our answers to them. We provided them with an entire list based on the records we had that they had produced to us, and provided them with an entire list so that they could not claim somehow that we were trying to avoid their questions.

But I think that the answers to these interrogatories miss the point about spoliation. We're not claiming that the documents that we have been able to obtain, from whatever source, is the focus of our spoliation. We're talking about the documents that we can't obtain from any source, which is the subject of our spoliation.

They ask us in one of their interrogatories to specify which documents we are claiming was destroyed which makes us unable to rely upon, or to form opinions, or upon which we are seeking the spoliation instruction.

We go through and outline in our answers the very documents which we don't have, and still don't have, and to our knowledge our experts don't have, and State Farm has not produced. That's what's at issue. The issue isn't who has what, and when they have it for purposes of the spoliation.

So I wanted to cover the answers to our [71] discovery requests, and if they want to bring a motion to compel on the details, I'm happy to discuss the details. But I don't -- I think we need to focus on really what's relevant. We're talking about the documents we don't have from any source.

THE COURT: These are documents that you can't specify as to a particular document, just categories that fall within these document destruction mandates from State Farm; is that correct?

MR HUMPHREYS: We can locate the category, yes. For example, the 1982 division claims conference, and Mr. Christensen will discuss that. The manuals that were applicable back at that period of time. Oh, yes, we can identify the general category.

But I can't give them the date and word and verse, because we've never seen them. They're gone. And therein lies our problem. And State Farm will stand up and say at trial to the jury, "There's no evidence of what they're saying. Their experts don't have evidence that this was applicable back in 1981." Well, some of the documents don't exist, and that's why.

But I'll let Mr. Christensen address that issue.

MR. CHRISTENSEN: Your honor, I'd like to briefly refer to some specific facts as it relates to [72] this issue. The bad faith case was originally filed, that is Campbell's bad faith case, in '86. At State Farms request it was dismissed as premature, because the appeal of the underlying case was pending. We asked for the court to rule that if it was dismissed, that the statute wouldn't run, and we got such a ruling.

So it was re-filed in '89. Served with the complaint, the '89 complaint was a set of discovery requests, asking for manuals, videotapes, and broad categories of claims type materials. That was dated August 25th, 1989.

In spite of this, in April of 1990, Janet Cammack, in-house counsel with the regional office at State Farm over in Greeley, Colorado, came to a meeting with all of the management personnel from State Farm in Utah. And there were several topics discussed at the meeting, but part of the meeting was where Janet Cammack instructed the destruction of some of the very evidence that had been requested in the case.

And I have a copy of her, the memo that Samantha Byrd, who was a supervisor who attended the meeting, wrote to her staff the next day. Would you like a copy of this, Your Honor?

THE COURT: Is it in your file? Have I seen that?

[73] MR. CHRISTENSEN: I think you have seen the document before. I'll give you a copy of it. I have a copy for counsel if you need it. I assume you have it.

There were minutes taken in the meeting which are part of the evidence in this case, and I don't think those were taken by Samantha Byrd. Samantha Byrd's handwritten notes are available, and Samantha Byrd prepared the memo that I've just handed you the next day.

Your Honor, from this document, as well as the others that I've referred to, it's clear this isn't part of a legitimate document retention program. This is deliberate destruction of evidence for the express purpose of keeping courts from seeing them in bad faith suits. And it's very telling.

It says, "Please get rid of old memos, claim schools notes, old seminar or claims conference notes, and any old procedure guides you may have." They're trying to avoid having to come up with old records when the request for production of documents comes in and they request all training manuals and so forth. It goes on to say, "I guess corporate is not even going to keep old CPG guides, old claims manuals, et cetera."

And then she goes on and says, "That way if they subpoena our claim manual for U claims for '87, for [74] example, we will say, 'We don't have it.' This should be easier than trying to produce it or having to defend it." Now, from what manuals have survived the purge, it's obvious why they don't want to try to defend these.

We have learned now that Janet Cammack's boss, Mr. Moskalski, the regional vice president in Colorado -- and by the way, he's present here today -- sent her over to Utah. He, in his deposition, denies having ever seen this, but he admitted he sent her over here, he admitted he sent her to the other offices in the mountain states region.

This was a deliberate destruction of evidence, after it had been requested in this very case. And also Karen Ortiz, who testified at the discovery hearing that we had in March in this case, acknowledged that this kind of material is routinely requested in every bad faith case. And I've given you a citation to the record on that in our memo, and that there are always bad faith cases pending against State Farm.

And it was admitted at that same hearing by one of the witnesses -- and I've forgotten which one, it may have been more than one -- that the Campbell case was the only bad faith pending against State Farm in Utah at the time of this meeting in Utah where the instructions went out to destroy evidence.

[75] Now, State Farm's own evidence, and there was a good deal of it presented at that March hearing, confirms that they had destroyed the evidence, and just how successful this has been. They sent Paul Short, who I think said he spent over eighty hours going to every office in the state, confirming the facts that this stuff was gone. And he kind of sheepishly, on cross-examination, had to acknowledge that after the April 5th, '90 meeting he really didn't expect he would find it when he went looking for it.

State Farm then apparently became aware that they may have left a hole in this evidence destruction program, and that was outside counsel may have documents. And so they, in 1995, sent hundreds of letters to outside counsel directing further destruction of evidence -- and clearly presuming those instructions were followed, and we have every reason to assume they were -- evidence that was being requested in this case and other bad faith cases at the very time was destroyed last year.

THE COURT: Mr. Christensen, let me frame two questions to you that are certainly on my mind on this issue. One of the issues is, certainly there have been a number of documents that have now been produced in this case backwards, from the expert to State Farm, and [76] I hear Mr. Belnap saying that they are prepared to admit the authenticity of most of them.

That leaves in my mind a question, are you aware of any documents that, aware of any specific documents that have been destroyed that would be relevant to this case, in addition to the ones that we already know exist, because your expert has them from other cases or other locations? I mean, what do we know that is really out there, that was out there, that is probative to the issue of your case, that has been destroyed and unretrievable? And how would you go about finding that?

MR. CHRISTENSEN: Okay, and obviously, as we speak about getting things backwards, this feels a little backwards. We are now telling State Farm what they destroyed.

THE COURT: No, this is a spoliation case. As I understand it, in these cases there's a presumption that there's something there that's been destroyed. And now we're saying, a lot of the stuff that we know they attempted to destroy didn't get destroyed, because experts had it, and you have it to present to the jury, and they're basically being admonished to not stand in the way of authenticating it unless there's some reasonable basis to do so.

[77] But now, having gone that far, what is there that you think has been spoiled that is not available to this case, that is unretrievable? How can you define it, and how can I know that there's such a thing that exists?

MR. CHRISTENSEN: I can't give you a complete answer, but I can certainly give you a partial answer. And before I lose the thought, let me respond to something they say.

They say they'll authenticate what our experts have, and we hope they will. They haven't yet. Throughout the country they've been refusing to authenticate documents that Mr. Fye and others have. And so the established pattern has been that they've destroyed it, and when it surfaces from another source, they deny it's authentic. And up to this moment that's still the case.

Now, they indicate they're going to change that, and we hope that they will.

THE COURT: Well, obviously if they don't, then that creates a different issue for the court than if they do.

MR. CHRISTENSEN: Right. As far as specific evidence that's been destroyed, I gave the court a copy of the State Farm versus Schlossberg case, which is a [78] published decision, the cite on it is 570 Atlantic 2d, 328, it's from the Maryland Court of Appeals, 1990. What's interesting about this case is not how we normally used published opinions, that is to cite law, but this is an important factual piece of evidence.

In 1988, Mr. Comella, whose name is familiar in this case -- he's the witness that Mr. Waldbillig had problems getting responsive answers from, and that was the subject of a hearing the court may recall -- Mr. Comella was deposed in 1988, he was asked about the Excess Liability Handbook. It was Exhibit 12 to his deposition.

There were a number of other documents produced in that case, some of the ones we've requested in this case, and I have not had the chance to, compare exactly the documents listed in this opinion with ones that may be missing in this case, but I think there may be some. I know of some specifically.

Mr. Comella was deposed in 1988, as part of the Schlossberg case. In his deposition in that case, he said State Farm kept historical files on each section of each manual. So you could go back and look at what the manual used to say and trace them back. And that's discussed at a couple of spots in his depo, and I've given page citations to those.

[79] And so when he was deposed in our case, just a few weeks ago, Mr. Humpherys confronted him with that. And he essentially said he didn't remember historical files. In any event, if they did exist, they're gone. So that is a key piece of evidence in this case that's been destroyed, is all their historical files on their manuals.

Obviously we would like very much to see the manuals that correspond with the time frame of the Excess Liability Handbook.

We believe without question they would show that the exact same practices and policies and so forth that are in that handbook were in other documents. They're destroyed.

Now, this case that I've just mentioned, Your Honor, Schlossberg, the appeal was decided March 1, 1990. Again, the history of the Campbell case, it was filed in '86, Comella was deposed in '88, described historical files, this case was refiled in '89.

It's inconceivable that the exhibits and documents that were referred to in this case were destroyed before the appeal was over, and so there's some direct evidence of destruction of the very documents we've requested, after we requested them, after the case was filed.

It's also evidence, Your Honor, of the [80] concealment of the Excess Liability Handbook. Again, it was Exhibit 12 in this case. It's not something State Farm could have forgotten about. There was a default judgment entered in this case against State Farm of $1.2 million, because Mr. Macherle, who was the head claims man for the whole company over fire and auto, refused to give answers about the Excess Liability Handbook.

After appropriate sanctions and warnings, the court finally entered default judgment because State Farm would not respond about that handbook, and it was sustained in this appellate decision. These games have been going on for a long time, Your Honor.

As far as other documents we could point to specifically, obviously old memos, claim school notes. We have witnesses in this case talking about things they were told to do in claims school. We haven't had any notes surface, old seminar or claim conference notes.

And let me hand the court a single document that Mr. Fye had that you've seen before, that's obviously an index, or a partial index to the 1982 divisional claims superintendent's conference. We attached this as Exhibit A[illegible] a discovery request, asked them

to produce it, and the answer we got -- or produce the materials pertaining to this conference -- the answer we got is, "They're all destroyed."

[81] MR. SCHULTZ: This has been produced, Your Honor. We gave it to you for in-camera review on privilege, you looked at it, you denied it, and it's been given to them.

MR. CHRISTENSEN: Well, there was one small document that had no probative value, as I recall.

MR. SCHULTZ: It was every one of these items inside the handbook, we gave you.

MR. CHRISTENSEN: And the video tapes of this conference are gone, all the materials relating to it, except for what they've mentioned, are gone. I've highlighted on there, Your Honor, this is a conference from several days. Obviously a three-day conference.

On this page, most of the items deal directly with the issues involved in this case. It's obvious that they devoted a good deal of time giving training to their people on bad faith and how to deal with excess liability cases. That's something that's gone.

The one set of tapes from the claims superintendent's conferences that have survived the purge is the '86 tapes that Mr. Fye has. We've just started to review those, and in beginning to look at those, it's apparent why these were destroyed.

They get into the lengths State Farm will go to beat down people who sue them for bad faith. One of [82] them they describe and instruct their people, and this is the management of the company that attends these, approximately 200 divisional claims superintendents and other claims management are there, where they get their marching orders and instructions for the next two years.

They're instructed in what they call mad dog defense tactics, where you tie up the plaintiff who sues you for bad faith for months in motions. And they say it works. They talk about truth is illusory in these cases. What counts is what you can get the jury to perceive, not what the truth is.

And they go through in detail and describe what are clearly improper, and misuses of the court and the court system, to beat down people like the Campbells, who choose to assert rights. There's no question why this, and every other divisional claims superintendent's conference, except the '86, has been destroyed.

As far as other specific materials, the Byrd memo is a pretty good checklist. Procedural guides, training manuals, so forth.

Obviously, besides just general manuals, there's going to be a lot of memos to claims people through the years on specific issues. As far as we know those are all gone.

[83] THE COURT: The second question I have is, what are you seeking from the court in connection with this issue?

MR. CHRISTENSEN: Okay, in connection with this issue, we want two things. And before I mention that, can I explain several other bases for it, besides simply spoliation?

THE COURT: Certainly.

MR. CHRISTENSEN: Spoliation is a sanction. We've more than met the burden on it. I've never had a case in my career with this much direct evidence of destruction. The case law indicates that you don't even have to show that they did it on purpose in your case. Simply showing that they destroyed evidence that was likely to be proper discovery in future litigation is enough. And our evidence goes way beyond that.

But there's some other reasons why this evidence is critical to this case. First of all, we're dealing with a punitive damage case we're dealing with a fraud case. Intentional infliction of emotional distress, and stubborn litigiousness are all claims in this case. For fraud, punitive damages, and I would submit, for intentional infliction of emotional distress, and stubborn litigiousness, evidence of concealment of misconduct and efforts to conceal [84] misconduct are relevant. It's part of our case in chief.

In other words, it's not only proper in this case as a sanction under spoliation, but it's part of our case in chief, evidence of concealment is part of our case in chief.

In addition, Your Honor, this evidence is very intertwined with the evidence in this case. I don't know how we can examine an expert, a fact witness. For example, their fact witnesses have taken the tack, and I think it's part of the State Farm plan, you destroy the documents, then the witnesses all don't recall.

We've only got meaningful discovery where we've had documents. And so we need to be able to show that pattern to the jury, that the documents have been destroyed as part of a two-part scheme of presenting, preventing the jury from hearing the evidence. The other part of the scheme is the witnesses' convenient memories.

Secondly, whether State Farm argues it or not, the jury is going to wonder why we don't have some of these things. And as we examine witnesses it's going to have to come out. Where is this stuff? Why is it gone? And that's just part of presenting evidence. And [85] I don't know how you can unwind that.

Certainly it's going to be --

THE COURT: Well, do you believe their motion goes so far as to ask the court for an instruction that you couldn't ask the witness where a document is and have them say it was destroyed?

MR. CHRISTENSEN: I don't know if it does or not. I'm certainly nervous that once there's a ruling by this court that, whether that was the original intent or not, they will claim that's what any order means. I suppose they would have to speak to that.

They've presented numerous witnesses, both fact and experts, that say they're not aware of any improper conduct by State Farm, ever. If a willful destruction of evidence isn't improper conduct, it would be interesting to probe with them what they believe is.

Your Honor, let me respond briefly to a couple of other things, and then I'll sit down.

Part of what's at issue, and I don't know this is the right legal term, but it's the concept. Part of what's at issue in a punitive damage case is the company's attitude. When someone's been wronged, what is the company's attitude about that?

This is strong evidence of an arrogant attitude on the part of State Farm, of, rather than [86] accepting the fact that they're guilty of misconduct, that they try to hide it, that they try to grind the people who pursue their lawful claims into the dirt. One judge has referred to State Farm as "a $20 billion gorilla," and that's consistent with this destruction of documents approach.

It's apparent, also, Your Honor, that the current game plan at State Farm, at least if you take the evidence that we present at face value, that State Farm is destroying the documents that confirm its misconduct, has been involved in a massive program to do that. Once those are all destroyed, both within and outside the company, they will only have sanitized memos and manuals. They will continue to give oral instructions of the improper practices, but they'll be able to present a clean set of documents which they can then show to juries and say, "See, we're clean. Our own documents prove it." While the ones that show what's really going on have been destroyed.

Let me respond also to the argument counsel made about the court's comments that this evidence would not be properly admissible in the first trial.

State Farm pressed very hard with Judge Rokich, got a bifurcation, there were some clear evidentiary lines drawn, that we all understood. We all [87] understood that that was not going to be the institutional case.

Now they want to say, evidentiary rulings to the court, and as I recall one of the main points they made -- and this is memory, I can't cite or point to the record -- but as I recall, they pushed very hard the fact that there was a bifurcation order as argument for the ruling they now claim applies to the second case.

I think they argued that the bifurcation order made that kind of evidence improper in the first case, that that was the institutional case. And now they cite that ruling to the court, out of context, as a reason why this evidence should be excluded in this case. And I would submit, Your Honor, that this is the institutional case, this is the time when it should be heard.

Finally, they make a point that evidence of their own misconduct is prejudicial. Interesting argument. This decision obviously came right from upper management. It was obviously a reasoned decision, it was made in 1990, reaffirmed in 1995 when they instructed outside counsel to engage in it, it's been reaffirmed in cases around the country repeatedly.

They had to realize, Your Honor, when they made a conscious decision to destroy evidence, and as [88] their own in-house counsel said, "so they wouldn't have to defend it in bad faith cases," they had to know, when that conscious decision was made, that this was going to be an issue.

They've made their bed. It's not fair for them to engage in massive document and evidence destruction to seek whatever advantage they can get from the absence of evidence, and then ask for a court to give its blessing with an order that says nobody can talk about it. It would be unfair to State Farm for the jury to know what they've done.

In any case, that would be an improper restriction, but especially in this kind of a case, with punitive damages, with concealment as part of the case in chief, with stubborn litigiousness. Your Honor, fortunately there's one place you can still go for justice. And that's to courts. And I don't know of anything that smacks of fairness more than to say to somebody, "You've hidden and destroyed evidence, you now explain it." Thank you.

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THE COURT: I think it would be probably better to take a lunch break now, give you a chance to respond after. As much as I'd like to resolve the issues, it's 12:30,and why don't we break until 1:45, that's an hour and fifteen minutes. I've got an engagement from --

I'm very much hopeful that we can finish the [105] issues that have been identified as part of this whole package that began on Friday, before the end of the day. I'm going to have to break at 3:00, I think about 3:15, to I think 3:30 to about 4:00. I think that's the time we'd set up, and then come back, and I'd rather get that over with.

Then I think I want to at least give plaintiff overnight to deal with this other, the orders that you have. I want, obviously I want plaintiffs to reflect on the orders and determine whether they think they fairly reflect the court's rulings, and make any suggestions they have. And then argue the implications of this BMW case, and if there's anything about that case that should alter the way the court's handled those things, and then take up the issue of not only the forms in the order, but whether there should be a stay. You're basically asking the court to stay the trial.

MR. BELNAP: Stay until we can get to the Supreme Court and see if they will accept either the petition for mandamus, or interlocutory appeal.

THE COURT: Well, of course my suspicion is, if I were to grant a stay, that we'd lose our trial setting. So at least that's how I would read the implication of that kind of order. And I think that, I'm sure plaintiff would, as well.

[106] I want to -- We have time tomorrow to do it, and we could either start in the morning or start in the afternoon. And I basically will advise the parties of that, and get your suggestions. as to when. And I think I'd give deference to the plaintiffs, because they're the ones who have been taken off guard.

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THE COURT: It seems like we probably want to have as many of the orders as possible done, because there's some kind of a contextual relationship among them.

Third, I've taken a few minutes to look at the BMW case. I think it would, just so both sides will understand, I'm going to have the case fully read by the time we get around to hearing about it tomorrow, and I don't expect anybody to file a brief. I would save the effort, I know you're busy doing other things.

In looking at the orders, my sense is that those orders are very cryptic. I'm going to want a substantially fuller record reflected in the order than what I'm seeing, at least with respect to some of those items. I'll hear argument tomorrow, I'm inviting the plaintiff, I guess, to spend their time working on those orders, as opposed to writing me a brief about the BMW case. And then, if I don't feel, after hearing argument from both sides, that the orders are fully reflective, I'm going to make my comments as to what needs to be [108] done to complete them.

But I want you to understand that it's not my intention not to sign the orders. I'm going to sign an order once I'm satisfied the order reflects what my ruling was, to give you your record to make whatever appeal that you wish to make. But I want to be sure that that order is a very complete order based on the hearing that we had and the evidence and the argument that was made, and simply not a cryptic statement of result.

* * *

[110] * * *

MR. BELNAP: Your Honor, first of all, with respect to the discovery requests we propounded, I won't take time to go through the response. We'll have to do that in a separate motion. But the fact of the matter is, the request was propounded for the specific reason that the cases asked for is, "Tell us what documents you don't have that you need to prove your case." And they have not answered that question.

And whether we dance around saying some of our categories didn't have a date on them, or some did have a date, but no year, that's really a smoke screen, Your Honor, in terms of the documents. Because of the Bates number, they directly relate to letters that we have sent over to Mr. Humpherys and Mr. Christensen when we have produced the documents and we have referenced what we're sending. If they want us to put a year behind the date of these, we can do so. It's just that the column wasn't big enough for some of them on that date.

The fact of the matter is, we asked some very pointed, four pointed interrogatories to get at this [111] issue, and they haven't answered the question. What they come up with when we have cited the court to the case law that says to get a spoliation instruction -- and by the way, we'll have to set this out to Your Honor, I think we've already done so -- but it's not a rebuttable presumption, it's an inference that you get from this if it's given.

But we've cited the case law that says you've got to be able to identify what it is, why you need it, how it's prejudiced your case not to be able to prove it by having it. And what we get in response is the 1982 document from the divisional claims superintendent's conference that we submitted in camera to Your Honor, with a bound booklet. And I don't know if you recall that, Judge. But we can bring it in if we need to prove that. It was like a small deposition.

THE COURT: No, I remember it.

MR. BELNAP: And you asked us, after looking at it, we produced it. There's no evidence that the video tapes were ever kept, if it was ever video taped, or that they should have been kept as a matter of law. The booklet was produced, we produced it after Your Honor told us to, after claiming an attorney-client privilege.

There hasn't been any other specific [112] evidence. And, in fact, at the January hearing Your Honor entered an order for the window of time period that manuals were going to be looked for and applied. And if we had time today -- I don't think Mr. Humpherys or Mr. Christensen will dispute this -- if we went section by section through these manuals, there's a myriad of sections that go back into the seventies, late seventies time period in those manuals.

We then went out and looked for more information, and produced, as I recall when we were in court, additional pages that were Bates numbered and produced over.

We have been faced, and each of the witnesses from State Farm that have been deposed have been faced with specific questions about sections of the manual that they do have. The articles from the manual that they are questioning the witnesses about, and saying, "Is this the practice at State Farm? Why did you have this practice?" They have the manuals. They have the articles that their witnesses believe are bad practices, are inappropriate to have as a company practice.

Discussion was had about the Schlossberg case, and references I brought up in my opening remarks about the case, and about the history file that was referred to in the case. And the court, in the case, [113] indicated in the decision that Mr. Christensen referred to, that Mr. Comella, who testified for two days in a deposition, comprising 288 pages, and a fair reading of the deposition reveals that Comella testified in a forthright manner.

During the course of the two days there were a few areas of inquiry at which State Farm, through its counsel, balked. On the whole those areas were not extensive, and primarily involved matters to which State Farm had reasonable objections deserving of judicial review.

Parenthetically, the need of State Farm to object, seemingly in the face of a court order, was a direct result of the order of November 14th, 1988, which clearly should not have been entered without notice to State Farm, and a reasonable opportunity to contest.

And what this case went on to talk about, Your Honor, in addition to the fact that Mr. Comella did testify forthrightly in the deposition, even though an earlier discovery order was improperly entered without notice, a subsequent waiver of that took place and the court allowed the default judgment that had been entered to stand, given all of the circumstances.

They alleged that this case stands for the proposition that the Excess Liability Manual was [114] concealed. And this court indicated that Mr. Comella testified forthrightly, and it cites the fact, and the deposition cites to the fact that he was asked about the Excess Liability Manual, and he indicated he had never seen it before.

That was the first time, when the plaintiff's attorney showed it to him, that he'd ever seen the document, and had never used it in all of his years as an auto company employee up through general claims. And how that can be concealment, I don't know how they get that from the deposition or the opinion.

They have alleged in this case, Your Honor, that they have a cause of action for being stubbornly litigious, and I'll let Mr. Schultz speak to that, but I don't think that's ever been plead, Your Honor. And it's not an issue --

MR. SCHULTZ: I don't see it in the complaint, Your Honor. There's five causes of action, and that is not one of them.

MR. BELNAP: Also I think it was indicated that there is a complaint for fraud, which we agree, but the pleading lists that as fraud in the handling of the file, in the handling of the claim.

Now, approximately, I think it was sometime this year, approximately three or four months ago, or [115] five months ago, Mr. Thur, one of the witnesses of the plaintiffs in this case,

had a case, a first-party claim that was tried down in the state of Arizona. And in that case they presented to the trial judge a spoliation theory from the Samantha Byrd memo and the other things that Your Honor has heard from these arguments today, the same issues were presented there.

That judge looked at the evidence that was presented, and the arguments and the approach that she took was, "You have not identified a document or a group of documents that you claim to need that you don't have. And so I'm not letting the spoliation issue go to the jury."

I think we have the same exact thing here, Your Honor, in terms of a lack of identification of what it is these people claim to need in view of what they've already got available to them, what we've produced, what they obviously have to be able to give us 3,000 pages of exhibits that they want to use at trial, and in view of what they have in terms of manuals that they've already presented at the first phase, that they can't meet that burden. And therefore, just to use it for other purposes, ancillary purposes, or bad conduct purposes, we don't think applies, we don't think applies to the cases that we cited to Your Honor.

[116] I'll let Mr. Schultz finish up in terms of the litigation avenue.

MR. SCHULTZ: Your Honor, with regard to the White case as cited in the Ted Stevens/Honda case, that case, the White case was a first-party case, uninsured motorist claim, as I recall, and there had been no determination of breach of the covenant, the implied covenant of good faith and fair dealing in that case.

And what the court said, the plaintiff was allowed to put into evidence, as part of their case to try and prove the implied covenant, the breach of the implied covenant, was the settlement offers that had been made by the insurance company to its insured. I'm sorry, it was not an uninsured motorist case, but it was an insurance case. And they allowed White to put into evidence the settlement offers, because the court felt that that, in

some way, showed a failure to comply with the implied covenant of good faith and fair dealing which hadn't already been decided.

It did not get into a situation where all kinds of litigation tactics or strategy or motions to compel and rulings of the court was fair game to come into the case.

Now, in our case, we already have a ruling from the first trial on the issue of good faith versus [117] bad faith. So that case just isn't on point for what we're trying to deal with.

And significantly, in this Nies case that I mentioned to Your Honor, and cited in my argument, even though that's another Court of Appeals, they specifically rejected the White rationale and said it's not on point in this issue, where the plaintiff in the Nies case was trying to put into evidence what they felt were contradictory pleadings, and allegations and pleadings that had been made by the insurance company once the litigation started.

So our position would be that the Nies case is more on point than the White. The White decision is not, is not controlling.

Now, the other thing that has not been addressed at all by plaintiffs is the partial summary judgment which specifically says that there can be no damages recovered for the prosecution of this case for emotional distress. That is, that's a finding, law of the case. And I submit that there's no way that plaintiffs can get around that without violating it if they are allowed to bring in evidence of proceedings that have taken place in the course of this case to try and establish some element of their cause of action.

I'm also concerned, Your Honor, when the [118] suggestion is made that we should just take these things as they come up, one at a time, because -- Let me give you one example, because plaintiffs haven't given any specific examples, really. And that is your order that came out of our January 5th hearing on discovery issues.

And one part of that order, Your Honor, as you'll recall, was the sanction that you entered with respect to the Kodani deposition. We talked about that at a subsequent hearing in

March, where we asked you to reconsider some of the proposed language that the plaintiffs had included in that order, and you agreed that some of that language could be modified, because your order went to Mr. Robie only, and not to any of the other people that were in that deposition. And you asked us to submit a proposal on that, which I did some time ago, and which I've been advised the plaintiffs don't agree with.

So we don't have that resolved yet, but my concern is that that is a very specific item that went to a discovery dispute, where you felt strongly about the way the attorney for Mr. Kodani had handled himself, and you used strong language in that order.

And it would be inappropriate, in our view, for the plaintiffs to try to use that order on the discovery matter where State Farm has been sanctioned [119] and paid the sanction, to then try to bootstrap themselves into some kind of a finding by this jury of outrageous conduct because Your Honor felt that what Mr. Robie did in that one deposition was improper.

And especially, again, in light of the partial summary judgment ruling, we would just ask that there be a very clear ruling that whatever happened in the course of this litigation, we're entitled to defend ourselves, and if we were, if our objections were improper, or if what happened was improper, you've handled that here by your orders to compel and other orders. Thank you.

THE COURT: Mr. -- I guess you have some more?

MR. BELNAP: I'd just like to conclude, Your Honor, by saying that I think that the ruling that you made earlier, where you said that to allow talk about Samantha Byrd issues and these earlier manuals and the implication that this flows from it, based upon the fact that you were allowing the use of the manuals, you went on to state, "Because of the document retention, the document retention program implemented, in my mind, several years after, that doesn't -- may be relevant, but I think it's more prejudicial than probative."

And given the lack of specificity, the other [120] issues that we've briefed, we would ask, Your Honor, that there be no instruction on spoliation, and that the other requests may be denied, with the exception that -- I'll just leave it at that, Your Honor.

THE COURT: Mr. Christensen, I want you to directly respond to the notion that there's been no pleading for stubborn litigiousness.

MR. CHRISTENSEN: I thought there had been. I'm not sure that if there hasn't, that that is a major issue. In our general statement of facts and explanation, which I have with me on page 40, and I'm sure the court has heard this referred to more times than you probably care to, page 40, we lay out our claim for stubborn litigiousness.

We have sought attorneys fees in the case, that's clearly been plead, and under the American States versus Walker case, Utah Supreme Court case, stubborn litigiousness is a ground for attorneys fees. And we explained that in our general statement of facts, it's been referred to repeatedly in this case, it's dated April 15th, '94, so that's more than two years ago.

If it's not been plead, and the court determines that it has to be plead separately, rather than simply as a basis for the attorneys fees claim, we can certainly take care of that. There's no surprise, [121] here, that would make an amendment to the pleadings be in the least bit prejudicial to anybody.

I don't think it needed to be plead, but if the court feels it does, we would be happy to plead it.

MR. HUMPHERYS: Your Honor, in Rule 15 -- I'm sorry I don't have the rules with me, I think it's B -- it states that if a matter has been litigated, and it has not been plead, the pleadings are deemed to be amended consistent with the issue that's been litigated.

I don't have the exact cite and the exact wording, but I think, certainly under Rule 15, whatever subsection it would be, the language would qualify for that. And if there needs to be a formality of having that plead, we certainly would be happy to. But I think under the rule it could be deemed admitted for the fact it's been litigated over and over, and been addressed in many, many pleadings.

MR. BELNAP: It hasn't been litigated. That rule speaks to a trial; Your Honor, where evidence is allowed to come in, and an amendment is made to conform to the evidence. It hasn't been litigated. And if it's a matter that goes to attorneys fees, that's a matter that the court has to take up after the jury returns a verdict, whatever that is. The jury does not decide that question.

[122] MR. HUMPHERYS: I would point out, Your Honor, the court allowed defendants to amend their answer shortly before the first trial. The amended answer was filed within, as I recall, a few weeks of the first trial. And the court ordered, allowing them to amend their answer, it was within a couple of months of the first trial.

MR. BELNAP: That motion was made months and months.

MR. HUMPHERYS: It was made months before, but the order allowing it was just a couple of months before.

MR. HANNI: That had nothing at all to do with the issues in the first trial, Your Honor. That amendment went to Phase 2, not to Phase 1.

THE COURT: I'm clear on several of the issues on this. As to the issue of attorneys' fees, I believe that -- I think both sides agree that that's an issues on this. As to the issue of attorneys' fees, I believe that -- I think both sides agree that that's an issue that the court would have to decide after, apart from the jury. And that's not an issue that the court and whatever would relate to that, that should properly come in before the jury.

As to the issues of State Farm's success in litigation, if I understand it correctly, Mr. Christensen was arguing to the court

that the [123] plaintiff should be allowed to demonstrate State Farm's aggressive tactics in pursuing litigation in order to rebut evidence that they have a substantial won-loss record, and that may be fair rebuttal.

To the extent that State Farm were to raise such issues as part of their case, I would expect that the arguments that Mr. Christensen made reference to would be properly admissible.

As to the issue of spoliation, I have two views of that. One, I don't believe -- I'm satisfied from the arguments and from the record that has been made, that any, that sufficient identification has been made of evidence which is properly before the court in this case is unavailable to, at this point, make a determination that a spoliation instruction is appropriate. And that's, that issue the court will reserve.

As to issues of concealment and spoliation, the court believes that those issues are properly before the court, and can be presented, and then what record is made after the issues have been presented will be the basis upon which the court determines whether there is, in fact, sufficient evidence to instruct on spoliation.

I don't -- I'll reserve on that, but not on the issue that there is a certain, in this case, a basis [124] to pursue the claims of concealment and spoliation.

As to the issues of stubborn litigiousness, I'm not going to allow a separate new claim on that. I became aware of that on the occasion of the briefing, here, and as I've listened to it, I've been wondering why hadn't I heard about this before, and I think it is, certainly there have been a lot of discovery disputes that the court has had to deal with, and has presided over.

But the court has never understood them to be in the context of a claim being asserted specifically as to the tort of the stubborn litigiousness, and I think this case is old enough and close enough to trial that to allow new claims to be argued to the jury is simply not fair to the other side, and I'm not going to permit that to occur.

As to evidence that goes, as to this court's rulings and as to the issues that go to this court's rulings, the court is going to be very hesitant to allow presented to the jury any evidence that picks up language of this court's orders, or anything else that was this court's effort to deal with discovery abuses or disputes or whatever.

I felt that the court has attempted to exercise its powers to order that discovery be [125] completed. There's certainly been points of frustration that have been expressed on the issue of discovery, and the court's mindful of that.

But the court also believes that the way in which those issues are properly dealt with are before this court with the considerable powers the court has under Rule 37, and the other inherent powers a court has, and it doesn't see the jury as being the mechanism for presenting disputes that have actually been before it to the jury.

The court would view it that way with respect to all aspects of the litigation, and frankly, if the court senses that there's an effort to try to litigate before the jury what has already been litigated before the court and decided to bring in those rulings, then that issue is open to re-examination.

I've heard arguments both ways suggesting what is going to be presented to the jury about the prior rulings of this court and the matters that are part of getting this matter to the jury, and it's not something I'm acquainted with. It's a unique and a new issue that the court's unfamiliar with, and the court's not going to make any absolute findings about that at this point, and will simply express its own grave reservations about presenting those kind of matters to a [126] jury when they're perceived as preliminary, as matters, basically in terms of the preparation process of a case for trial, not something to present to a jury.

So I'm expressing my reservations, but I'm not making it a final ruling as to one way or the other, whether one's presented, on a case-by-case basis, I think something should properly

come in or not. But I'm inviting counsel, before you make a determination to put something before the jury that really relates to an earlier phase of this trial, other than, obviously, what was the results of the first jury trial, I think it would be appropriate to advise opposing counsel, and also give them an opportunity to bring that before me outside of the presence of the jury so I can make a fair ruling as to each particular situation.

MR. HUMPHERYS: Would that include opening statements, as well?

THE COURT: Oh, yes, certainly. I think the opening statements have to be particularly guarded, and arguments that I've indicated in my mind are the questionable zones of interpretation. That's -- Those are the matters I'm clear on. Are there other things that I've not clarified that you think I need to address?

MR. HUMPHERYS: Your Honor, what about the [127] certification that we have requested that State Farm comply with the January 5 order? If we can rely upon --

THE COURT: That's still an order of the court, isn't it?

MR. HUMPHERYS: Yes.

MR. BELNAP: Your Honor, that was subsequently talked about in two subsequent hearings where Your Honor specifically said that we didn't have to file this certification that they asked for as to who had been contacted and what had been come up with. And specifically the last go-around, when there's been three weeks of depositions in Bloomington alone, where there's been tremendous amount of information of a technical nature gone into with accountants, computer people, other people, it's not part of the court order.

And if it was, to go back and fashion some statement to go and weave through all those depositions is going to be an impossible task. They've got them. They're a matter of public record, Your Honor. They can use them in this case for whatever they deem they're appropriate to be under the rules that

depositions are used for, and other statements of discovery that we're required to sign as counsel under Rule 11, and the parties that are signing them under oath.

And Your Honor has already ruled on that. [128] That is not an order of the court as represented by Mr. Humpherys.

MR. HUMPHERYS: Let me see if I can clarify in my mind what was addressed in the March 7th hearing. We addressed the issue, and counsel for State Farm said, "Your Honor, we think that the certification requirement is too broad because it requires us to disclose the name of everyone that we have contacted to obtain information, and we think that invades work product and attorney-client privilege."

The court expressed some reservation that maybe it might. And my memory of it is that I said, "Well, let's at least get a certification that what they are responding, from an evidentiary standpoint, is State Farm's formal response, that we can rely upon."

And counsel for State Farm then said, "Well, why don't they take the depositions of everyone they've got planned, ask them all the questions, and if there's still an issue then we can address it with the court."

Now, we are not asking for the elaborate certification that was set forth in your order. We are requesting that State Farm, with someone duly authorized -- and they can choose who that is -- but we would request that the certification be specifically mentioned that general counsel for State Farm has been [129] consulted, and that the documents that have been represented that do not exist at State Farm do not exist under any control or possession in any form, including electronic data.

That's all we're asking, a very simple certification. We're not asking to give all the names and all the routes and everything they complained about before. I think it's a simple request, and

it's appropriate, given the kind of problems we've had regarding documents. We don't understand why they're resisting. If they don't have it, then let them certify it.

MR. BELNAP: Well, Your Honor, two things. Number one is that has not been the order of the court. To say it's a simple request, on the last trip back to Bloomington, Mr. Humpherys asked witnesses, again, "What do you have in these areas?"

And if he's got some evidence that they haven't been forthright, he's got them down in black and white in a deposition. We have since been, since we were in this court in March, we have answered three subsequent written sets of interrogatories and document requests. We're on our fourth one that was submitted to us after the discovery cutoff, and we went ahead and answered it.

[130] And that is the way the discovery rules proceed. You have a deposition, you have written discovery that counsel or the parties sign. And to ask for some request and certification that's contemplated under the rules that, I don't know if they want to send this out on the plaintiff's internet, I don't know what they want to do with it.

But we've gone on record answering the discovery requests, giving depositions as ordered by the court, without any instruction to witnesses after, Your Honor, we had the ruling to both sides, free and wide open discovery back in Bloomington, without any instructions to witnesses.

So to come in at this late hour and ask for some certification that we don't understand the necessity of, and it's not provided under the rules, and this court hasn't ordered it, it's just not appropriate, Your Honor.

MR. HUMPHERYS: I need to reply factually. I did take the deposition of a number of corporate officers while I was back there. But one thing that was continually true and consistent when I asked every one of them, "Do you know what documents the legal department and general counsel has kept?"

All of them said, "I have no idea."

[131] Now, and I said, "Have you searched, or would you know?"

"No, we would have no idea."

Therein lies our problem with this. We believe there's a data bank, and it's being shielded under their attorney general counsel office. I mean we just discovered within the last three weeks what I represented this morning.

Steven Prater, our expert, said that State Farm came in with the most sophisticated electronic equipment, and scanned into their database literally tens of thousands of documents that he had. And where does all of this go?

It was clearly the attorneys that were doing it, under the attorney's guise. All I can say, Your Honor, is we're just asking for the certification, because no one yet in behalf of State Farm has certified that State Farm does not have those documents that they've represented were destroyed. Everyone they've represented, or everyone they've produced has said, "Not to my knowledge, not to my knowledge," when I've asked, "Do you know what legal counsel has?" They've said no.

There was one fellow who worked in the fire general claims legal staff, and he talked about the fact that, he talked about the CLR, but he said, "I don't [132] know what general counsel has, and I don't know what auto legal department has." So factually we just haven't got an answer to it, which is why we're raising the issue.

MR. BELNAP: Well, Your Honor, I think that Your Honor's rulings stand, they're in the transcripts from those prior hearings. We, as counsel, have an obligation, and I have represented to the court before that I have gone back there and I have made the due diligence search, I have met with people, we have answered the discovery, we have complied with the rules.

And to go beyond that, at this date, on some certification that I've never heard of before in my years of litigating, I don't understand it, and there's not a basis for it in the rules.

And we have gone on record. It's not like we've been ashamed of, or been afraid to sign the pleadings after we've done our due diligence and after we've brought forward the information and the documents.

THE COURT: Mr. Humpherys, what purpose would you put to this certification to?

MR. HUMPHERYS: Two things. First of all, we would use it in the course of the trial to rely upon as State Farm's formal response to the requests for the documents and their destruction. Right now we have to [133] piecemeal it, because it's scattered throughout dozens of witnesses that some know a little bit, some don't.

If, in fact, Mr. Belnap, what he says is true, then fine, let's certify it by someone with authority on behalf of State Farm.

The problem I have is that as soon as we use Karen Ortiz, who was the designated representative, who said that there's not, there's very little in the CLRS, and it's not being used and so forth, as soon as we try and use that, then all of the sudden we have information, "Well, there is a CLRS and we did provide them with an index and we did have all this evidence in there," and it's a moving target.

Well, then we try and present evidence through "Mr. So-and-so" who said there wasn't this evidence, and then they produce someone that says, "Well, but he didn't know, and there really was some, and here it is, here."

And probably most importantly, Your Honor, I think, for the record, that would be binding throughout the country in any other future case as of this point in time, to have State Farm certify, with a duly authorize agent, after having consulted general counsel, that there is no such legal system, that LSS or any other electronic data bank. I think for the public policy, [134] given the problems

we've had with the destruction of documents and evidence, we need to have that, just for plain public policy and honesty.

MR. BELNAP: And can I just add one --

THE COURT: I think at this point I'm not going to order the certification. I have some mixed views about it. I'm not sure how much of a role this court has in establishing certifications for the benefit of the general public.

It certainly is clear to the court that there have been, at least at the early stages of this thing, some substantial problems with discovery, and that there certainly has been difficulty in obtaining full discovery of records, at least that at one time existed at State Farm.

However, at this point in time, I understand that discovery's been completed, and I've heard relatively little complaint the last few weeks, so apparently it went better than it had been going.

MR. HUMPHERYS: It didn't, Your Honor, but we -- There's nothing we can do. It's too late.

THE COURT: Well, let me just suggest that if I am -- During this month-long trial, if I'm hearing from witnesses that are put on by State Farm anything that gives the court any kind of pause that there's an [135] effort being made to suggest that something exists that has been suggested by other State Farm witnesses through discovery or at trial that do not exist, because of a lack of knowledge or familiarity, or anything that puts the court on notice that there's a concern as to the existence of documents that we were all led to believe did not exist, then the court's view on the certification, and perhaps other issues relating to this, will be dramatically changed.

I'm going to operate on the assumption that what has been produced is everything that State Farm has, reasonably believes exists, and that there's been a full and diligent, reasonable effort to comply with discovery requirements, and that not only Strong and Hanni, that I've never had any reason to believe have been attempting

to conceal or not discover documents, but the full State Farm organization has now acted reasonably and in good faith in satisfying the discovery requests that have been made at this point.

And the documents that we were informed, through the process of discovery and hearings before the court, do not exist in the files of State Farm, I'm going to assume that that was an accurate representation, and intended to be a full and complete representation.

[136] But if the court is led to believe that that is not true by what is put on before this court, then I'm going to reconsider the issue, and deal with it directly at that time. But at this point I'm going to let the record stand as it has been made, and based on the representations Mr. Belnap made, and what I understand of the case, I'm going to so rule.

MR. HUMPHERYS: Okay, now, Your Honor, this raises perhaps a good illustration of what we would like to rely upon of what's gone on. May we rely upon this representation made by Mr. Belnap during the course of the trial and so state?

THE COURT: Well, again, I mean Mr. Belnap, said what he said, and --

MR. HUMPHERYS: Right, but it goes to the issue, they've moved to exclude what may occur during the course of the litigation. And Mr. Belnap's representation is not evidence. And so I can't put Mr. Belnap on the stand.

Are we in a situation, given this ruling, that I can now represent that State Farm has represented to the court that they have produced all of these document -- In other words, can I now address the jury and the evidence and so forth with that representation being made, and act accordingly?

[137] MR. HANNI: Your Honor, I just hear counsel for the plaintiff over there just continually beating, beating, beating, beating, and wanting the last word. The court made its ruling, said what it said. The record's clear. And for counsel now to want to keep pushing, pushing, pushing closer to what he wanted, a certification, I think is improper.

MR. HUMPHERYS: The only thing I'm asking for is something that I can rely upon to talk about during the trial, that's all.

MR. BELNAP: They have --

MR. HANNI: The court's told you what you can rely on, the record's clear.

MR. HUMPHERYS: What I'm saying is, this goes to the issue before. Can I now go to the jury -- I'm raising this as a specific item. Can I raise in opening statement that counsel for State Farm has represented that they have produced all of the documents that they have within their possession and control? And I do that without --

MR. HANNI: He's asking now for a certification by the lawyers. That's all he wants, he wants a certification from State Farm, and if he can't get that, he wants the same kind of thing from the lawyers.

[138] MR. HUMPHERYS: I just want something I can rely on.

MR. HANNI: That's not proper, Your Honor. The record's been made.

THE COURT: Mr. Belnap has said what he said, and I think that we all could rely on what each other has said, but I'm not going to make a specific ruling that gives the premitur of the court on what Mr. Belnap has said any more than what anybody else said.

Mr. Humpherys, you can do with what has happened in the process of discovery, including the argument that's been made, as much as you can. But I'm not inclined to highlight or isolate a statement any different than anybody else's statement to the court.

MR. HUMPHERY: But what I'm doing is I'm giving notice now to the court and opposing counsel under the prior order that I would like to make reference in opening statements and during the course of the trial the representation that they have produced all of the requested documents as ordered by the court.

THE COURT: You've made your record.

MR. HUMPHERYS: Okay. And if there's going to be a motion to exclude, then they'll need to make it.

MR. BELNAP: I'm going to make it right now, Your Honor. Because the written pleadings are there. [139] We've answered. And interrogatories are allowed to be used for appropriate purposes of impeachment and other things. And if we haven't complied with those, they're a matter of record.

MR. HUMPHERYS: You see what I'm saying, Your Honor? I can't rely on anything. That's why I wanted the certification. As soon as I try and rely on something they renege.

MR. BELNAP: I can't be put on trial, just like Mr. Humpherys can't be put on trial. If he's going to introduce litigation tactics as an alleged stonewalling of State Farm, then I've got to put him on trial as to who he's told that about, what has he told his clients? We can't be putting attorneys on trial, and that was their argument, Your Honor.

THE COURT: Well, I didn't understand him to be putting you on trial. I thought he was trying to take a statement that he thought you'd made, at least I interpreted you making, that State Farm has complied with discovery in good faith --

MR. BELNAP: I have made that. But once again, Your Honor has correctly compartmentalized this case that we have, this aspect of the case, where we've gone through discovery, and Your Honor has dealt with issues under Rule 37 and other appropriate court powers, [140] and we're now moving to trial. And if I'm going to be put on trial that "Mr. Belnap said this" or "he didn't say that," then how do I get up and make myself a witness during trial?

MR. HUMPHERYS: I'm not proposing that I use his name. I'm just going to propose that State Farm has represented that, to this court, that they have produced all documents. I'm giving notice that I would like to say that in my opening statement, and use it during the course of the trial. That's all. I'm not trying to single up Mr. Belnap, but I'm using his representation as State Farm's position. That's all.

MR. HANNI: We object to that, Your Honor. I think that counsel is pushing, pushing, pushing. He wants to get, indirectly, what the court has denied him directly. And I think it's highly improper for him to be wanting to do that. He just basically wants to get up there and start saying, "Well, counsel for State Farm has said this and said that." That's highly inappropriate to be doing that, and we object. The court's ruled, the record's clear.

MR. CHRISTENSEN: Your Honor, this highlights the concern. It's become obvious to us there is a data bank of electronic documents --

MR. HANNI: Here we go again, last word.

[141] MR. CHRISTENSEN: And anybody who's asked to say there's not quickly skirts the issue.

MR. BELNAP: Judge, they have gone so deep into my client back in Bloomington, and the fact of the matter is, if State Farm chooses to go down to Steven Prater's warehouse, and to get a copy of his documents, and under current technology to image those so that they can be used on a computer, does that highlight there's a data bank? To say that, Your Honor, is bunk. And I don't know what else to say.

THE COURT: It's the court's view that inferences can be drawn, and arguments can be made from the discovery responses that are made by parties. And I don't know that it's necessary to have counsel making representations in a hearing before the court for parties to properly draw inferences from the discovery that's gone forward, that what has been produced is what is there. And that, to me, is appropriate as part of what inference can be drawn from what documents are made to exist.

I'm not inclined to go any further than that as to what we do with argument, because I think we need to distinguish between the discovery phase of the case and what the implications are, from the discovery that is produced, and what is properly presented to a jury as [142] the evidence in the case which is the product of that discovery.

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EXCERPTS OF TRANSCRIPT OF PRE-TRIAL HEARINGS, JUNE 4, 1996

[Vol. 1, R. 10256, commencing at p. 17]

* * *

MR. HANNI: On the Excess Liability Manual, Judge, we do not think that ought to even be talked about until a complete foundation is laid, and the court rules on whether it's admissible or not.

MR. HUMPHERYS: Let's not rehash the same motions again.

MR. BELNAP: I don't think the court ruled it was admissible. The court just said it's there, and if you lay an adequate foundation then it'll come in, but not until. That's my understanding of the ruling.

[18] MR. CHRISTENSEN: The ruling was they admit it's authentic, so that's not a foundational issue. And the only remaining issue, then, is relevance, and the 403 issues.

MR. HUMPHERYS: But that has to do with admissibility. Glenn's now asking again not to talk about it in opening statements, and the court has expressly ruled on that, there was a motion and a ruling, and the court said we could. That's what I'm asking not to rehash.

THE COURT: They can talk about it in opening statement, but if you want a ruling at this point, I believe it's admissible. I believe there's enough been established on that, that it comes in. If that's going to be a problem, at this point I think I'll go ahead and make that.

MR. BELNAP: Could I just say one thing on that, Your Honor? We raised at the last hearing, you did say it could be discussed in opening statements. But at the last hearing, their response to the order that was tendered, that we felt was indicated something contrary to what we thought you had ruled, that you would be willing to take a look at that when the foundational

aspects were laid at trial for that. Give us an opportunity to voir dire the witness, or object.

[19] THE COURT: Well, what I want to be sure is clear, I don't know what Mr. Hanni was raising, but if he's raising the issue of whether that thing can be used in opening statement, I thought I was clear on that point.

MR. BELNAP: I recall that.

THE COURT: And if I have to make the ruling to make that clear, I'll do it.

MR. BELNAP: I recall that Your Honor did say that it could be used in opening statement. But I also recall that when we raised the issue of the order and the way it was written, that you indicated because of the exigency of signing those, that you would allow us to voir dire and object to whatever witness was going to lay the foundation for that.

THE COURT: All right. I don't have a problem with that, as long as it's clear you use it in opening statement, and then we go with the other part of it. We've spent an awful lot of time on that, and I don't want -- How do you plan on putting it on? What is your expectation with respect to introducing it?

MR. HUMPHERYS: We probably will generally refer to it with Mr. Fye, not introduce it, but refer to it as simply a manual, and we probably won't be getting into it specifically as an exhibit --

[20] Let me back up. Mr. Fye's got two parts. One part is where he is discussing the underlying case, as he did in the trial last October. The second part of his testimony would be regarding the patterns and practices of State Farm. Clearly he will be addressing it in that context, and at that point Ray Summers will also be addressing it when he is testifying.

THE COURT: Are you intending to have that proposed into evidence this week?

MR. CHRISTENSEN: I'd like to use it. I don't know what more foundation needs to be laid. Again, there's not an authenticity question, it's relevant. I don't think there's been a document in the history of the Third District Court that there's been more discussion on relevance, and the court's ruled. And I don't know what the foundation is that needs to be laid that hasn't been laid.

MR. HANNI: I think, Your Honor, that the discussion was, Krogue said that he got that manual when, in '79 when he was in Virginia. And nobody's ever claimed it was used here, or that they knew anything about it.

But he said, or he claims he can testify that the practices set forth in that handbook was what was going on in Utah, and that Ray Summers can do the same [21] thing. And the question is, those are the only two people that they've named that can hook that handbook up to Utah.

MR. HUMPHERYS: But Utah isn't the issue.

THE COURT: No, that was certainly the place we left off when the court entered its orders. At that point we had a further hearing, had additional argument. And the argument that Mr. Christensen made was an argument that I found persuasive, and that is that this manual has relevance, and Krogue certainly was someone that, whose testimony was suggested in the first hearing, on the subject, but that the subsequent hearing held with Mr. Christensen, Krogue's not really a dispositive piece of its admissibility, but rather, the other testimony that he called to the court's attention in reference to that manual.

There was a long record made on that, and that's why I don't think Krogue has much to do with laying a foundation. I went past that in the, when we revisited that issue, and I think we're clear on that.

And that's why I'm struggling with this, and wondering what it is that we're still holding on to from the standpoint of State Farm that requires us to revisit this thing. We've talked about it so many times, it seemed to me the last time I was very clear on it.

[22] Mr. Belnap, what is it that you hope to raise that would be a challenge to its admissibility beyond what we've already heard about?

MR. BELNAP: Your Honor, maybe I'm missing the point, and you could help me, here. But to respond to your question, there has to be, in our view, a connection to indicate the document, as Mr. Christensen has stated, we've stated that it was a State Farm, that the copy is a copy of an original document. We acknowledge that.

But secondly, it seems, for foundational purposes, there has to be some evidence that that document was in use by this defendant, and that it had some, and that its use was used in the claims that are pertinent in this case, adjusting of this claim, and by their statement, the pattern and practice claims that they're making nationwide.

There has to be a witness that's going to say that to hook it to the auto company, to the claims in this case, and to Utah. And if they want to take it nationwide, so be it. But there has to be a witness that lays that foundational aspect.

And their witnesses on that foundation are Mr. Krogue, that he got the document when he was with the fire company, he came to Utah five years after this [23] accident, and he was still with the fire company. Mr. Summers has reviewed the document and says that, even though he never had it, and it was never used physically in Utah, it is consistent with what his understanding was. I understand that testimony.

But it seems like there has to be some predicate foundational basis from either a Krogue or a Summers to say that it comes into evidence against this defendant in this case, the auto company, claiming that it was their document, and they used it. Did that answer the court's question?

THE COURT: Now, you --

MR. CHRISTENSEN: Those are all arguments we've been over and over. As you know, I could give a very lengthy response. We briefed it, we've argued it. I don't know what 104 hearings are for, and motion in limine hearings are for, if they don't count when you're through. Essentially they're saying that was just an exercise for everybody to practice their arguments.

At their request the court had pretrial hearings, it's been decided. And it's going to totally foul up our witness schedule if we've got to call a bunch of foundational witnesses to rehash what's already been decided before we can proceed.

MR. BELNAP: I don't object. I mean the [24] court's ruled that it can be discussed in opening statements, and some other witnesses, you know, the jury's going to hear about it if some other witnesses need to refer to it, like Gordon Roberts.

But ultimately, if it's going to come into evidence against this defendant, this auto defendant in this case, there has to be a foundation and predicate from someone that it was an auto document, used by the auto company, used in this case for the pattern and practices that they want to take beyond this case, nationwide.

THE COURT: Well, the way I see motions in limine, motions in limine are notions to exclude evidence, that the court doesn't even consider. That if I deny a motion in limine, that means that the document comes in, assuming the foundation is laid.

MR. BELNAP: Right.

THE COURT: Now, there certainly is a basis to believe that you can lay the foundation. I'm clear on that. And that was the reason I ruled as I did. Because I've heard State Farm's argument on the point, and I believe the foundation is there. And I would allow you to put on evidence in anticipation of getting it in so you don't have to put on your witness in order to lay the foundation and then be able to use it.

[25] But I think that, as the way I see it, the technical matter, there's a foundation that can be laid for anything. Motion in limine says that you can lay the foundation, not that it's automatically in evidence.

104's a little different, because you actually put on the testimony. That 104 we did some time ago was not intended to, the decision there was to exclude it. But that was for a different purpose. It wasn't meant to -- So I didn't allow it in in this case, but exclude it in that case. I just excluded it in the prior case.

So I think that my ruling is, and it seems consistent to me with my sense of this, you have a right to lay the foundation, you've given me enough in your proffer of what you can do to not be precluded from making reference to it in opening statements, but that the foundation needs to be laid, and we'll just do it in due course.

MR. HUMPHERYS: All right. And we, then, can have witnesses talk about it, but not actually introduce it into evidence until we're down the road a ways.

THE COURT: Yes.

MR. HUMPHERYS: And lay the factual connection as we have discussed.

THE COURT: That's right.

[26] MR. HUMPHERYS: Okay. That's workable, then. The important thing is we don't have to just rearrange the witness schedule.

THE COURT: No, I think -- I ruled as I did in order to allow that, but to keep consistent with my sense of the motion in limine.

MR. HUMPHERYS: Okay, I understand.

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EXCERPTS OF TRANSCRIPT OF PRE-TRIAL HEARINGS, JUNE 6, 1996

[Vol. 3, R.10258, commencing at p. 29]

* * *

MR. CHRISTENSEN: Thank you.

MR. HUMPHERYS: Now, regarding some evidentiary issues, we have had a chance to look at the proposed exhibits or illustrations that State Farm proposes to use during the opening statement, as well as some of the descriptions of their witnesses which seems to violate some of the rules excluding evidence.

First of all, in their exhibits and in their summaries, they indicate that they are going to be [30] talking about the dismissal of the bad faith action and the appeal. I thought this was expressly dealt with. They will be implying, if not expressly arguing that because of that dismissal that there were some grounds, some reasonableness, some, whatever inference they choose to make. And that's inappropriate, Your Honor, because if they're going to do that, we want the appellate opinion into evidence which will show why Judge Rokich was in error.

The jury should not be speculating as to why a judge may or may not have made certain rulings. This court has indicated that it is inappropriate for this jury to start inquiring about and deciding what was fair, unfair, or proper or improper about the proceedings since the filing of the complaint.

The court said it should be plain vanilla. If they want to refer to the fact that there was an appeal during this proceeding, and not have it refer to either side, that's fine. I have no problem if they simply want to explain why it's taken so long. But to try and take advantage of a dismissal in somehow justifying their position is inappropriate.

Another matter, as well --

MR. BELNAP: Can we take those separately, Judge?
[31]THE COURT: Is your other matter related?
MR. HUMPHERYS: It's related.
THE COURT: Go ahead.
MR. HUMPHERYS: Part of what they are also going to be addressing is what Campbells knew or didn't know during the pendency of this proceeding. And also during the proceedings of 1986 during the settlement negotiations. One of the things that plaintiff contended from the beginning is that Campbells suffered emotional distress all of the way through the appellate process and the underlying action and through the present action.

State Farm made a motion to limit plaintiff's damages to exclude any emotional suffering during the pendency of the present action, as well as any time after the December, 1984 agreement. They wish to elicit evidence, and they have this in their illustrations, that Campbells were unaware of negotiations that took place during 1986, they were unaware of when State Farm had paid the judgments in 1989 until about 1990.

They moved to exclude all of this evidence, or at least evidence of damages, and now they wish to take advantage of it for some purpose to somehow imply that the Campbells are being manipulated, or that they are somehow a pawn at the mercy of the Ospitals or [32] Mr. Slusher.

And they're going to be arguing that, suggesting that the Campbells had no knowledge of what was going on, were not suffering, or if they were suffering, it was because somehow they were not given information.

Now, we contest a lot of that. It's highly contested. It will include a great deal of additional evidence to have to deal with that. Such as in the '86 negotiations, when Mr. Hanni asked in a deposition of Mr. Campbell, Mr. Campbell said, "I don't recall knowing about State Farm's offer in 1986."

He has since seen his correspondence from his counsel where he was sent copies of the correspondence. And it has refreshed his memory. And he would then have to explain that, and we would have to go into all of that. And it's irrelevant for purposes -- Because they have excluded their claim of damages, or our claim of damages, excuse me.

Then, on the issue of when they knew about whether State Farm had paid the judgments, we would then have to get into whose responsibility it was to pay the judgments. In the deposition of Paul Short he testified that, in defending and supervising defense counsel, and defending Mr. Campbell, when the excess judgments would [33] be paid, that would be the duty of defense counsel to alert the Campbells, and he would expect that to have been done, either by Mr. Bennett or by Mr. Hanni.

They are asserting that I should have told him. And so now we're getting into the problem of incorporating counsel as witnesses, as, "Who's to blame for this? Why wasn't it done?" They suffered because they didn't know State Farm had paid the judgments for a year, and it's all irrelevant, because of the court's limitation of damages.

And yet they somehow want to take advantage of this, and it opens up just a whole wide area, including the implications that Mr. Hanni and Mr. Burton should have told them, Mr. Bennett should have told them, they will assert I should have told them or Mr. Barrett should have told them, and it mushrooms into an unworkable mess. And it has really no probative value, and so we would move to exclude that under 403.

We want to confirm that they are not going to be arguing that State Farm, as a mutual company, only the shareholders benefit, and therefore we would not be going into the salary and control of State Farm executive officers. Paul represented to me he was not going to go into that argument, which would

open the door, but if they've changed their mind, or if they're [34] going to, I want to be able to talk about it in opening statements.

I would suggest that the relevance of the 1986 negotiations can be dealt with very plainly, and that is that there were offers made on these terms, and that's as far as we go. Well, except that they were rejected. And there's no need to get into who told who and who knew about what, and why.

The offers were made to counsel, both personal counsel, Mr. Miles Jensen, and the letters were sent to me. And again, it's trying to bootstrap me back up into this limelight, and into the evidence, with no legitimate purpose for the case. Thank you.

THE COURT: Okay, Mr. Belnap?

MR. BELNAP: First of all, with respect to the appeals, if Your Honor will recall, you indicated that on a time line the jury would not be told that the Slushers and Campbells filed a lawsuit, and that the Slushers were dismissed from that case. We do not have that on the time line, in compliance with the court's order, first of all.

Secondly, Your Honor did indicate that there could be a statement, just so that the jury could know that an appeal was taken, and an appeal was decided. That is what's on our time line.

[35] THE COURT: How does it read?

MR. BELNAP: Pardon?

THE COURT: How does it read?

MR. BELNAP It simply reads, "In October of 1994, appeal is taken, October," or excuse me, "March, 1995, appeal decided." That's what the time line reads, and that's what Your Honor indicated that we could have on here.

We do have, in 1991, "Bad faith case dismissed, March, 1991, appeal is taken, August, 1992, decision from Court of Appeals allowing case to proceed," quote, unquote.

So if that, we submit that that's as pure vanilla as you can get in terms of just statement of those events on a time line.

THE COURT: What do you intend to do with that in your opening statement?

MR. BELNAP: Simply that, to indicate that those are events that happened, and I'm not going to argue it. I'm not going to argue that Judge Rokich said this, or anything else.

THE COURT: I'll allow that much.

MR. HUMPHERYS: Would you allow us, then, to make comment about the Court of Appeals, and why the Court of Appeals found the dismissal was improper? It [36] seriously prejudices us without our explanation.

MR. BELNAP: Can I finish, Judge?

THE COURT: Go ahead.

MR. BELNAP: With respect to the 1986 offer of State Farm to pay, it can't be packaged as simply as Mr. Humpherys would package it, in terms of the fact that that's not relevant. Because unless they're willing to stipulate that they're not going to make any claim that State Farm should have stepped forward sooner between the appeal in 1983 and paying the judgment in 1989, that is relevant for that purpose.

The ruling of Judge Rokich is that there are no emotional distress damages after 1984, but there is also the question, this jury will have to decide if there was a condition that arose before '84, or if a pre-existing condition was aggravated between '83 and '84 that continued. That may be relevant for the jury to determine, and these facts are relevant for that area, Your Honor. I don't intend to do anything other than to say exactly what's on the chart, and I'll read this to you, if I could.

THE COURT: Read it.

MR. BELNAP: "February, 1986, State Farm agrees to pay judgment against Campbell if appeal is not successful. August, '86, State Farm promises to pay [37] Slusher and

Ospital judgment, parenthesis, Campbell claims he was not told about State Farm's promise." That was his deposition testimony, Your Honor, and has continued to be his deposition testimony without change. With respect to the 1989 payment, that is.

And this court already read to the jury in the preliminary statement, these events in 1986. With respect to the 1989 statement, obviously that is one of the things that we do want to tell the jury, that we paid the judgments, and the time line says, "State Farm pays judgment to Slusher and Ospital in full with interest and costs, July, 1989."

Now, in March of '90, when Mr. Campbell's deposition was taken, the time line says, "Campbell deposition taken. 'I was not told that the Slusher and Ospital judgment had been paid until the day before the deposition.'" That was his testimony, that continued to be his testimony, without change.

It goes back to the issue, Your Honor, of if there was a condition that he claims was aggravated, and continued, that jury ought to know about that as they sort through that issue, and that instruction that this court will need to give them at the end of the case.

MR. SCHULTZ: The fact that Mr. Campbell testified in his deposition that he was not told about [38] these things, and now counsel is saying that he has gone back and seen letters that have refreshed his recollection, and apparently would now testify that he was told about these things, Your Honor, is also relevant, because it goes to the credibility of Mr. Campbell's testimony, that he can't remember a lot of other things which are pretty critical to our case.

He's going to testify that he has no recollection that Mr. Bennett ever told him a lot of things. And we think that the fact that he's testified about something as important as being told that State Farm promised to pay these judgments, and that he didn't remember that, goes to the credibility of his testimony and his recollection.

If he couldn't remember something that important, then we're entitled to argue that, well, maybe he's not remembering as well about some of these things that are critical to our case. So that's another reason why that's important.

MR. HANNI: Your Honor, if I may add one thing. We have asked repeatedly for copies of these letters that are purportedly there to refresh Mr. Campbell's recollection that he was told about the offer to pay in February of '86, and our renewed offer to pay unconditionally in August of '86. But that has [39] been kept from us.

So on the basis of attorney-client privilege, you can't use that privilege as a shield and a sword. And we have, to this day, never seen those letters. And Mr. Campbell was unequivocal when his deposition was taken in 1990 that he did not know anything about those promises to pay, and he didn't know that the judgment had been paid. And we think that's pretty critical we be permitted to tell that.

MR. BELNAP: One final thing, Your Honor. I don't intend to argue the nature of State Farm Mutual in my opening statement.

THE COURT: Do you want to respond?

MR. HUMPHERYS: Okay. So we can take them one step at a time, let's talk about the '86. What I'm having a problem with is, we're now showing illustrations to the jury in opening statement, and unless there can be a non-controversial, vanilla-type illustration that is being exhibited, the court should not allow it.

What he read was that State Farm agreed to pay in February of 1986 the judgments. That isn't what they agreed. What they said was, "We offer to settle all claims, including the bad faith claim, for payment of the judgments." That's a convenient thing they left [40] off.

In terms of his knowledge about the offer, he will say that he was not in favor of it, he did not authorize it. Slusher,

Mr. Slusher and Mr. and Mrs. Ospital will do the same, because it wasn't an unconditional offer of simply paying.

And as it relates to the item Mr. Hanni raised about attorney-client privilege, we've asked for their communications regarding their offers and their authority to grant such an offer, and their communications between Mr. Hanni and State Farm regarding the payment of the judgments. They have precluded us from having any of their correspondence either.

This is simply an area that goes to the negotiations of the bad faith claim. And neither side has opened that door, nor dared they, because of what it will, the ramifications of that. I suppose if they want to open up their attorney-client privilege for the same time period and let us see what they have to say, we'll do the same. I'll make that offer to State Farm right now. And if they choose not to, then that should not be a basis upon which to allow that evidence in, merely because Mr. Campbell has forgotten about the communications.

[41] Now, as it relates to the '89 payments, it will incorporate asserting fault on the part of Strong and Hanni, and they will assert fault on Christensen and Jensen for not telling the Campbells about the payment of the judgments. It will assert fault on Mr. Bennett and State Farm. Who had the responsibility to tell him? As soon as you open that lid, now someone has to justify why the Campbells were not told.

Christensen and Jensen's going to assume that because that dealt with the underlying case, State Farm was defending him by contract under the policy, they had the duty to tell him that the payments had been made, and that if he was left in the dark for a few months about those payments, it was the judgment against the Campbells which State Farm was defending. And as Mr. Short, their divisional claims superintendent admitted, it was his responsibility to make sure Campbells knew about it.

Now, as soon as we open that door, you've got to explain why, or there's improper inferences and substantial prejudice to the parties. And I'm talking about both sides. And it makes us witnesses, and it makes it very awkward to deal with. And the probative value, if any, is so minuscule that it is far outweighed by the evidentiary problems, the trial problems, the [42] problems dealing with privileged communications and this whole ball of wax. So it's improper to allow that on that basis.

As it relates to the appeals, Your Honor, why must there be any discussion about the intervening time period of '89 to '96? We wanted to get that in, they moved to exclude it all. We felt it was relevant to show that State Farm is stubbornly litigious and show how costly it has been for us.

The court said, after they represented that they were not going to make reasonableness of fees, and the fees would be handled by the court after the trial, the court said, "No, I'm not going to allow stubborn litigious issues, and it's too much."

Now, what has happened when the court has excluded what is the events between the filing of the action and the present case, except for the first trial and the judgment, now they flip-flopped, and they sent the court a letter the end of last week that says now they want to have in the trial an issue of foreseeable and reasonableness of expenses.

We can't address reasonableness of expenses unless we get into the entire events of what occurred, the appeals, why, what was going on, the reasons for it, and so forth. And so what's happening is, jockeying for [43] position, once they get a ruling, then they go back and move in a different direction.

It would be highly prejudicial to us for this jury to hear that the case was dismissed, without us being able to explain why it was dismissed, and why the appeal, and what the Court

of Appeals ruled, and how the Supreme Court refused to take certiorari, and it would be highly improper to talk about any of the appeals.

If there's going to be anything, it just needs to say, "An appeal was taken in 1990 through 1992, another appeal was attempted in 1994, another appeal was attempted in 1996," and not have any parties associated with it. Because as soon as you get a party associated with any action of the court, there's going to be inferences, and there needs to be explanations.

And in all my practice, I just, every court that I'm aware of has excluded what has gone on from the filing of the complaint, and the judges simply say a cautionary instruction, "You are not to interpret one way or the other anything about the reason it has taken time since the filing of the complaint to present, and I instruct you not to have any, draw any conclusions for one side or the other, in favor or against one side or the other. That is not your concern, there have been legal proceedings which have been taken up through the [44] course, and we are here to decide the present issues that's all you should be concerned with."

That's the way I've heard other judges deal with it, so we don't have to get into who gets some advantage by talking about what's transpired during the interim. Because there's a lot of things we'd like to talk about, too, but we can't. And so it's highly prejudicial to let any of it in. And that would be our position.

MR. BELNAP: Your Honor, there was a couple of issues raised. May I briefly just respond to those?

THE COURT: You may.

MR. BELNAP: First of all, repeatedly through the course of these events there have been arguments that Campbells have been put through this case for fifteen years. If we don't have the ability simply to put some points on the

time line that this jury can see big, huge gaps, and wondering, without explanation, just simply a statement, an appeal, that I read to you, then it gives them the advantage of saying there's all this time, and the implication is against our client, the defendant.

Secondly, the court asked us to send a letter to you indicating which way we wanted the issue of the factual issues that surrounded attorneys fees and costs [45] dealt with, and we sent that letter at the request of the court within the time that you asked us to do.

The stubbornly litigious argument was a separate issue relating to the discovery motion that Your Honor dealt with, separate from the expenses, that may be consequential damages or not in this case.

To say that we should just have non-controversial things said in opening statement, obviously there's going to be a lot of controversial things said in the plaintiff's opening statement, and I guess that's the nature of the case that we're starting today.

We need to be able to put these points on. I'm not going to overplay them, I'm going to indicate what I did to the court when I stated that. I don't think it is going to involve having to put on Christensen and Jensen as witnesses, or Strong and Hanni.

The fact of the matter is, Christensen and Jensen represented Mr. Campbell from 1984, on. Mr. Humpherys signed the satisfaction of judgment himself in 1989. It's not going to require any evidence, Your Honor. It's not going to require attorneys having to be witnesses. And we would submit it.

[46] THE COURT: All right.

MR. HUMPHERYS: Your Honor, on the issue of attorneys fees, I do need to clarify. We need to know on this, as well, in opening statements, because they now have asked

us to prove foreseeability and reasonableness of expenses. In order to do that, we have to talk about what's transpired during the discovery stage, because that's what's cost us incredible amounts of money.

And I think that, since they represented that attorneys fees and expenses should be handled after the trial, we agreed, and that's what the court has ordered, and they're revisiting that issue. We need to know that, as well, because we would need to start talking about why it has cost us so much.

THE COURT: Well, that's an issue that I was hoping to have more on. I'd anticipated that would be taken up by the court, and I received that communication.

MR. BELNAP: And you solicited, if you recall --

THE COURT: Clearly. I'm not disputing that, Mr. Belnap. What I'm attempting to explain is that, in attempting to get the court's desire on that back to the parties, there was a lapse in time. And now we're at [47] this point, and still uninformed about whether it's an appropriate jury issue, or something that can be handled by the court.

And so I don't have an answer as to how we proceed on that. And until I have a chance to get input from both counsel as to whether or not the court is compelled to submit that as an issue to be tried before the jury, certainly Strong and Hanni has now told me that's what they wish to do. But I don't know whether that's something you concede, if sought by the defendant, is a jury issue, or whether the court has some discretion, despite the fact Strong and Hanni wants to try that for the jury, but for the court to reserve that to the court.

MR. BELNAP: What there is, Your Honor, is some predicate findings, some factual issues in terms of the alleged consequential damages and foreseeability, and some other predicate factual issues that we believe are a fact question in terms of those points, and that's what our letter meant to address.

THE COURT: Do you have any response?

MR. HANNI: There's one comment, if I may make that, on the idea of, we were supposed to communicate the offer of settlement in February of '86 and August of '86. I've never heard of such a claim, [48] when the agreement clearly says that Mr. Humpherys is the attorney from December of '84, on. And in addition, his clients, Ospital and Slusher, get 90 percent of the recovery, and they're the ones that have the right under that agreement to say whether a case can settle or not.

And to suggest that we ought to go to Campbell, when that kind of an agreement is in place, and they have the veto power over any settlement, is just totally ridiculous. Mr. Humpherys is the only one we could make the offer to. He had total control on whether the case was settled or not. And to suggest that we could deal direct just doesn't make any sense.

MR. HUMPHERYS: Apparently Mr. Hanni's misunderstood my point. My point didn't go to the '86 offers. It went to the '89 payment of the judgments. The judgments they were defending Mr. Campbell on. Obviously offers to settle a bad faith claim had to come through our office, I'm not disputing that.

On the issue of the attorneys fees and reasonableness, Your Honor, in the case of Canyon Country Store versus Braiser, the issue of attorneys fees and costs, I believe, were tried to the jury on the basis of reasonableness, that is what are reasonable fees, and instead of a contract for contingency fee, which the attorneys fee arrangement was.

[49] In a preface sentence, the Utah Supreme Court said, "Because the parties stipulated that the issue of attorneys fees would be decided by the jury," and then it proceeded to talk about them. In the case of Billings, the issue of attorneys fees and expenses were decided after the case, as was the case of Crookston.

There are legitimate reasons why it needs to be decided by the court after the fact, and that is in order to talk about reasonableness of the expenses, for example, we have to talk about why Mr. Fye had to come here multiple times, why he had to charge so much due to the court's orders, their requests, their motions, and their evidentiary issues. He's going to have to talk about a number of these things to talk about how reasonable it is for him to charge what he charges.

Now, if we're going to try the reasonableness issue, we have to get into all of the reasons why or why not what the judge was ruling in the course of discovery, in terms of a contingency fee agreement, that was contained in the '94, or excuse me, the 1984 agreement, that can be addressed as a foreseeable issue.

And if counsel wants to have the jury answer a question, "Were attorneys fees in a contingency fee nature foreseeable by State Farm?" that's fine, and we'll deal just with the issue of foreseeability. As [50] soon as we get into reasonableness we have to go into all of the areas.

For example, for attorneys fees to be justified on a 40 percent basis, we have to talk about why counsel does not get paid for over five years, six years of work, seven years. Advancing, well between 100 and $200,000 in out-of-pocket expenses, running the risk of losing, and all of these side issues. I would have to take the stand and give testimony at some point in time during the trial. That's all right, that happens.

But we're going to get into all of the events of this case, and what bad faith cases are, and how hard State Farm has fought the discovery and other issues in this case as a factor, because that is one of the reasons why the contingency fee is charged, is because of the anticipated fight, the appeals. There'll be appeal after this, I'd have to go into how that would play into it, and the length of time and all of those factors.

So it introduces incredible amounts of new issues. If they just want to go into foreseeability, that's a simple issue, we can deal with it. In fact, I think it's directed verdict material. Their own vice president of claims said that he, it's common knowledge that attorneys charge on a contingency fee basis [51] anywhere from a third to 50 percent, which is well within the agreement here with the parties.

And so it's a muddled issue. It's a hard one, but the court's going to have to revisit, it seems to me, if defendant wants to maintain their current posture, the order precluding us from talking about what's gone on in the course of this case. And so --

MR. BELNAP: Could I make a suggestion? We don't intend to argue this in opening statement. I don't see why it has to be dealt with in opening statement, Your Honor. And I would make that commitment to the court, we're not going to argue that in opening statement.

MR. HUMPHERYS: But it's an issue in the case, and I want to address it if it's going to be in the evidence. I want to go into it.

THE COURT: Well, now, are you asking -- What I was hearing you saying was foreseeability.

MR. BELNAP: Yeah, there are some factual predicate questions that, under the cases, if you get the consequential damages question, there has to be a factual predicate finding of foreseeability for the breach of contract, a predicate of foreseeability.

THE COURT: Well, we'll take up the issue -- Foreseeability will be a jury issue, and we'll have a [52] special verdict on that. The issue of reasonableness will be reserved for the court. I don't believe you're challenging that.

MR. HUMPHERYS: Okay, then we can address that in opening statements, the foreseeability issue?

THE COURT: All right.

MR. BELNAP: Now, could I just caucus for just one moment, Your Honor?

That's acceptable, Your Honor.

THE COURT: Thank you. On the other issues, in the opening statement the court would instruct counsel to just say "appeals were taken," as opposed to "the matter was dismissed," because I think that creates issues that need to be explained that would unduly complicate this case.

In terms of the discussions on the settlement, I'm going to allow the discussion as sought by the defendant in the case. I'm going to suggest that you limit it as you have stated, and even if it does create some difficulties, as plaintiffs have suggested, I believe at this point I'm not inclined to exclude it.I just believe that it's something we should put in the perspective of where it fits in the rest of the case, and so advise you.

MR. HUMPHERYS: How about the '89?

[53] THE COURT: As well I'll allow them to go into that.

MR. BELNAP: I just have a bit of housekeeping. I gave these to Mr. Humpherys on Monday, and I realize we've all been busy and working hard. But we have this prepared in a chart, and I just assumed there wasn't any objections, and so that's going to create a problem for me --

THE COURT: Let me see what it looks like. What kind of a chart do you have?

MR. BELNAP: It's one of these foam boards with this, only larger.

THE COURT: Do you need a minute, or can we bring the jury out? Mr. Belnap was going to see if he can solve the one chart issue. We're going to have a recess before you finish, if you're going to go forward for three and a half hours, so there might be a chance to get it done at noon.

MR. CHRISTENSEN: There's a quick issue. I assume we're not going to hear comments about the alleged charges against Mr. Crowe in opening statements? That's something the court will decide before it's talked about?

MR. BELNAP: That's agreed.

MR. CHRISTENSEN: And I have one other issue. [54] They have, some of their experts, the insurance regulators made phone calls around the country. The rule allows experts to rely on certain kinds of hearsay.

I don't think it allows experts to call -- For example, Mr. Yancey was calling some of his friends around the country. I don't think it allows him to quote them, so that it's a way for Mr. Yancey to say, "So-and-so in such-and-such state said this."

THE COURT: I think a quotation would be hearsay. He can rely upon it, but not put it into evidence as a quotation.

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EXCERPTS OF TRANSCRIPT OF PLAINTIFFS' OPENING STATEMENTS: ROGER P. CHRISTENSEN, ESQ., JUNE 6, 1996

[Vol. 3, R. 10258, commencing at p. 57]

* * *

(The jury entered the courtroom.)

THE COURT: Members of the jury, we're about to begin the trial of this case. You have heard some details about the case during the jury selection. Before the trial begins, there are certain instructions you should have to better understand what will be presented to you, and how you should conduct yourselves during the trial.

The case will be presented, and you'll be excused to deliberate, and you will reach a verdict. By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial. Before you retire to deliberate at the close of the case I will instruct you on the law that you must follow in applying and deciding your verdict.

Since you'll be called upon to decide the facts of this case, you should give careful attention to testimony and evidence presented for your consideration, bearing in mind that I will instruct you at the end of [58] the trial concerning the manner in which you should determine the credibility or believability of each witness, and the weight to be given the testimony.

During the trial, however, you should keep an open mind, and should not form or express any opinion about the case one way or the other, until you've heard all of the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the law.

While the trial is in progress, you must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence.

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the lawyer on each side of the case to object when the other side offers testimony or other evidence that the lawyer believes is not properly admissible. You should not be angry at the lawyer, nor infer or conclude, from any ruling or comment I may make, that I have an opinion on the merits of the case favoring one side or the other. And if I sustain an objection to the question that goes unanswered by the witness, you should not draw any inference or conclusion from the question itself.

During the trial it may be necessary for me [59] to confer with the lawyers out of your hearing with regard to questions of law or procedure that require consideration by me. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine, and should be patient, even though the case may seem to go slowly.

The case will proceed in the following order. The plaintiffs' lawyers will make an opening statement outlining the case. Defendant's lawyer will then make an opening statement outlining its case immediately after the plaintiff's statement.

What is said in the opening statement is not evidence, but is simply designed to provide you with an introduction to the evidence the party making the statement intends to introduce. The plaintiffs will introduce evidence through testimony of witnesses and exhibits. At the conclusion of the plaintiff's case the defendants will do likewise.

I will instruct you on the law which you are to apply in reaching your verdict at that point, and the parties will present closing arguments to you as to what they believe the evidence has shown, and the inferences which they contend should be drawn from the evidence.

[60] What is said in closing argument, just as what is said in opening statement, is not evidence. The arguments are designed to present you the contentions of the parties based on the evidence introduced. The plaintiff has the right to open and close the arguments.

I'm going to ask my clerk to swear you in as jurors in this case, and then we'll proceed to opening statements.

(The jury was sworn and impaneled.)

MR. CHRISTENSEN: I appreciate having an opportunity to speak with you. We know, as attorneys, how much people like to hear lawyers speak, and so you're in for a real treat today, you're going to hear several hours of attorneys speaking.

Seriously, I hope this will be very helpful to you. You, I'm sure, have many questions in your mind. You've gotten just enough glimpses at this case to wonder what it's about. You're probably wondering how it could possibly take the length of time that's been predicted, and we, as counsel, are going to lay out what we think the evidence will show to you, and explain some of the issues to you. And hopefully that will be very helpful to you as you then begin to see the evidence.

Opening statements sometimes are compared to [61] putting together a jigsaw puzzle. You will see the evidence one piece at a time, and the reason the courts have opening statements is, it's difficult to know how that evidence fits if you don't know the big picture. And so, like a jigsaw puzzle, where you have the box, and you get the picture on the box, and you're constantly looking at as you try to piece the pieces of the puzzle together, you might compare that to an opening statement.

We're going to give you the big picture. And then, hopefully, as you begin to see the evidence, as it comes in a piece at a time, it will help you put it in context.

I should introduce to you myself, I'm Roger Christensen, I'm with the firm of Christensen and Jensen in Salt Lake. Mr. Humpherys, my partner, will speak to you a little later. We've divided the opening statement.

You've been introduced to Mrs. Inez Campbell, who's seated here at counsel table, who is one of the plaintiffs in this case. Her husband, Curtis Campbell, is the other plaintiff. He's not here, because Mr. Campbell has Parkinson's disease, he's in his late seventies, and that disease has been progressing for a number of years, and so he's very limited in what he can [62] do. We expect he will be able to appear at the trial and give some testimony, some will be read from testimony he gave under oath a few years ago, but that's why Mr. Campbell is not here.

I should make it clear to you that we don't attribute Mr. Campbell's Parkinson's disease to State Farm. That's something that he developed through whatever acts of nature, and unfortunately that's a disease that progressively gets worse.

I was raised in the Cache valley area, and the auto accident which started this whole thing happened in that area, so I can identify a little bit with it, although I've always practiced law here in Salt Lake.

Mr. Humpherys was raised in the Orem area but has always practiced here. The Ospitals, who you saw seated behind us during that very long jury selection process, have an interest in the case, that Mr. Humpherys will be explaining to you in some detail. They're from the Ogden area.

Under the rules, people that are going to be witnesses, except those who are parties, are not allowed to sit in the courtroom while other witnesses testify. Because of that, the Ospitals won't be able to sit in the courtroom, and that's why you will not see them very [63] often.

A Bob Slusher, who has an interest in the case, lives in Indiana. And he, you will get to meet him. He also, though, will not be seated in the courtroom during the evidence.

Let me move on, if I may. The case which you're about to hear is about a large insurance company's mistreatment of somebody who bought their insurance and paid the premiums for many years. That's the Campbells.

After willfully accepting the premium money for many years, when the time came for the Campbells to really need the insurance protection, State Farm, instead of fulfilling their duties to the Campbells, mistreated the Campbells. They didn't do what they promised to do.

Now, that may sound like a brash statement, but there's some other things you need to understand. You are kind of the culmination jury of a long process. It's not a legal term, that's my term. Two other juries have made findings before this case. And the findings of both those juries are important to you.

First of all, there was a jury who tried the auto accident case, and decided it in Logan in September of 1983, and I'm going to tell you about that in some [64] detail.

There was also a jury that tried part of the issues of this case last October and early November, just a few months ago, and that jury did not hear nearly as much evidence as you're going to hear. It decided that State Farm was guilty of misconduct. The word that's used often in the law is "bad faith."

Insurance companies owe a duty to people they insure, to treat them in good faith, and to protect them, and honor the contract in good faith. And the jury last October determined that State Farm had acted in bad faith in its treatment of Campbells.

In that verdict they decided that State Farm had been unreasonable in its failure to settle the claims against the Campbells within the insurance limits, in a case where there was a substantial likelihood that if the cases were not settled, that there would be a verdict against the Campbells above their insurance, which is what happened.

And the jury last October and November decided that issue in favor of the Campbells and against State Farm. So it's already been determined, and you will not be asked to re-decide those issues.

There are also claims that have been made in this case that State Farm is guilty of fraud in its [65] treatment of the Campbells.

There are claims that State Farm acted either intentionally or in reckless disregard to the Campbells' rights, and as a result they suffered severe emotional distress.

And a very important issue in this case is the issue of punitive damages. And that is whether State Farm is guilty of willful or reckless misconduct that would justify an award of punitive damages to deter them from continuing to engage in such conduct.

Because of that claim, the punitive damage claim, you're going to hear a great deal, not only about how State Farm mistreated the Campbells, but how, on a fairly widespread basis, they mistreat and cheat a whole lot of other people, and make many millions of dollars doing it.

We're not claiming they mistreat and cheat everyone, but you're going to hear evidence that it is done on a wide scale basis, and it is very profitable for State Farm to do that.

Now, this is not an ordinary case, as you might suspect. In my career of a little over twenty years, I've never spent three days picking a jury, I've never been involved in a trial of this length, I'm sure you haven't either. I know it is a hardship for some of you, I guess it is for all of you. It's harder for some [66] of you, and we appreciate that your lives have been disrupted.

I think, and let me submit to you that as you look back on this experience, that hopefully it will be one of the more significant experiences of your life, and that you'll get something for the inconvenience.

This may sound like a rash statement to you, but I mean it sincerely, this is one of the more significant cases in the country right now. There's a certain amount of pride, if that's the right word, that it's being tried here in Salt Lake City. I think you can feel good that, as citizens, you're fulfilling your civic duty, and that you are sitting on the jury of this case.

If you didn't have this experience, I would submit that a few years from now you wouldn't even remember what you did these few weeks. But years from now, hopefully you'll look back,

having had a positive experience, and said, "I sat on the jury of the Campbell versus State Farm case, a case that was decided right in Salt Lake City, Utah."

Now, before you learn about State Farm in general, you need to learn about what happened to the Campbells. That's really the crux of what is behind this case, and certainly what got it started.

[67] Now, in May of 1981, the Campbells had insurance with State Farm. It was automobile insurance. And on May 22nd, they had been to, I believe it was a wedding reception in Brigham City, and were driving back to Lewiston, Utah, which is a small community in the northern part of Cache valley. And they were traveling through Sardine Canyon, some of you may be familiar with that road, it's been changed now in the last couple of years.

Back then, in '81, it was just one lane in each direction through an area called Dry Lake. And some of you may be familiar with that. The Campbells had insurance with State Farm with limits -- Insurance limits, and because we can't, as lawyers, engage in a dialogue with you where we say, "How many know what insurance limits are?" and so forth, I know I'm going to insult some of your intelligence, but since I don't know what you know and don't know I'm going to make some basic explanations. And for those of you who already know some of this, I hope you'll bear with me.

Insurance limits of 25-50 mean liability limits. Liability means, if you make a mistake driving, and you get sued, then you have protection. Your insurance company protects you against the suit that's brought against you. So it's called liability [68] insurance.

There are other kinds of auto insurance. Collision insurance is if your car gets damaged, that's insurance to fix your car. PIP, or personal injury protection insurance, pays certain medical benefits to people in your car if you're injured.

So there are several types. But I'm now talking about liability insurance. Coverage limits of 25-50. That means that the insurance company will pay a maximum of $25,000 for each claim, and a maximum of fifty for each accident. So if you had only one person injured, then the maximum insurance limit would be twenty-five. If you had three people injured, then the insurance company would not pay more than twenty-five for any one person, but they wouldn't pay more than fifty for the whole accident.

So the Campbells had 25-50 insurance. And as I mentioned, all of us, as we drive, make mistakes driving. We don't intend to hurt people, and fortunately we usually don't. We usually get away with the mistakes and the dumb things we do driving. But because sometimes our foolish mistakes result in harm to someone else, the law requires that each of us carry liability insurance for our cars.

Mr. Campbell made a mistake when he was [69] driving through Sardine Canyon on May 22nd, 1981. It was late afternoon or early evening, there was a group of, I believe it was six vans, it was Memorial Day weekend, and there was a group of six vans that were traveling together. They were in some sort of a club. Some of the people knew each other well, some hardly knew each other. But they're traveling together.

And they were moving at about the speed limit of 55, maybe a little less, through the Dry Lake area. And Mr. Campbell came along in a Ford LTD, and it was gray. And the reason I tell you the color is because some of the eye witnesses talk in important statements about the color of the cars. And he was driving along with this group of vans, and decided to make a pass.

And I brought a chart that I think may help you. You're going to hear these names over and over, and I think it will be helpful to you to have something that you can visualize. And let me say right up front, I'm not going to try to get this exact or to scale. This is simply to give you the general idea.

You'll hear testimony that it's common in cases of serious -- Have I got that upside down? You're right, I do. All right, we'll get our vans headed north. I had them headed south.

As they were heading south through this Dry [70] Lake area, Mr. Campbell made the decision to pass. It's a fairly long, wide-open stretch, and he made the decision to pass.

You'll hear testimony it's common in auto accident cases with a number of witnesses for the witnesses to each see things a little differently, and there was some discrepancy in some of the details of the accident, some question of whether he passed all of the vans at the same time, or only part.

But he was passing, and while he was in the process of doing that, another car came over the hill, and that car was driven by a young man of nineteen years old by the name of Todd Ospital. And obviously this is a moving thing, and I'm not going to take the time to keep moving all the cars.

But as the Ospital car approached, and the Campbell car is in the opposing lane, there reached a point where the Ospital car started to take evasive action to avoid a collision with the Campbell car. And the red lines that are drawn here are one of the expert witnesses from the Logan trial, years ago, drawing sketches showing the marks that were left by the Ospital car.

Mr. Ospital was able to avoid hitting Mr. Campbell, but as he went out on to this side of the [71] roadway -- and you have to remember we're talking highway speeds, here -- as he swerved out around Mr. Campbell, he lost control, and his car swerved back, and ended up colliding head on with a van driven by Mr. Slusher.

And by this point in time, Mr. Slusher's van was the last one in the caravan. These marks right here show the Slusher van after it was hit going out into, traveling out into the Dry Lake area, it actually ended up in some shallow water, there.

And you'll see some pictures of the damage to the vehicles, but this was a very violent collision. Mr. Ospital died right there at the scene, from very, very serious, horrible injuries. And Mr. Slusher did not die, he's still alive, but he was very seriously injured as a result of the accident.

Now, the Campbell car was not touched. That's what State Farm would call a non-contact accident. Mr. Campbell felt like he had just made it back before the Ospital car hit him, several of the witnesses said he didn't. His testimony was that he made it back one second before the Ospital car passed him. I'll leave this up for just a minute.

Mr. Campbell was an honorable man. His car was not touched, he could have just kept going, he didn't. He turned around and he came back to the scene. [72] Several eye witnesses said Mr. Campbell was at fault.

He had experienced some personal tragedies in his life. That, and being a good person, he did not want to believe that he had really caused the death of a very outstanding young man, and serious injuries to another man. So understandably he felt, told himself, "I didn't really cause this."

The police officer who investigated the accident, a Mr. Parker, took some measurements of some of these marks. This was, by the time he did that, it was dark, it was busy traffic on a holiday weekend. And based on some marks he measured -- And it was very important to distinguish, in what he was trying to do, between scuff marks and skid marks. And based on those measurements he concluded that the Ospital car was going at a high rate of speed, over 80 miles an hour. It turned out later he was wrong, and I'll explain that to you in a minute. And immediately -- Of course Mr. Ospital was not there to say, "I wasn't speeding," he was dead.

And so very early in the case the investigating officer was suggesting that Ospital's car was speeding. Mr. Campbell reported this accident to State Farm, even though his car was

not actually hit. State Farm assigned an adjuster by the name of Ray [73] Summers to look into it.

Ray Summers had been with State Farm for approximately eighteen or nineteen years. He was experienced, investigated a lot of accidents in Cache valley. He didn't have to go very far to realize Mr. Campbell was in serious trouble. That with a death and a very severe injury, the 25-50 insurance wasn't adequate to cover the exposure. By the way, that's an insurance term. Exposure means, "How much are you at risk for?"

He wrote a report explaining what he'd found, that Campbell was seriously exposed, they ought to authorize all of the insurance money available, the 25-50, and try to get the claims against Campbell settled.

That report was submitted to his supervisor, Bob Noxon at State Farm. Bob Noxon wrote a quick note saying he agreed. It was then sent on to the man over both Noxon and Brown, the divisional claims superintendent, a Mr. Brown.

Mr. Brown, and you're going to wonder why when I tell you this, and Mr. Humpherys is going to explain to you why, but Mr. Brown, for reasons of State Farm's interests, not Campbells', called Mr. Summers and said, "I don't want you to say things in a report like, [74]'Our insured's at fault and we should pay.' I'm destroying your report, I'm instructing you to rewrite it, I'm instructing you to destroy your copy, and you're to rewrite it saying Campbell's not at fault and we shouldn't pay."

And Mr. Summers protested, he said, "I don't feel right about that, like what we're doing to the Campbells."

And Mr. Summers was told, "Do what you're told."

And Summers said, "Well what do I say to the Campbells?"

And he was told, "Reassure them."

So Mr. Summers, wanting to keep his job, rewrote the report, essentially falsified it, went and reassured the Campbells they didn't have anything to worry about. He testified he felt a sense of shame as he did that. The Campbells trusted him.

You may be surprised to hear that that kind of evidence exists, even if it's true. Well, Mr. Summers came forward in 1982, after he and State Farm had had some differences, he came forward in 1982 and told the truth about the Campbell case in some sworn testimony, and told the truth about a number of other cases, too.

[75] State Farm hired an attorney, Mr. Wendell Bennett. One of the things you get from an insurance policy is -- I'll take this down.

One of the things you get from a liability insurance policy is, if you get sued, the insurance company hires a lawyer for you. And they pay for the lawyer. They get to pick the lawyer, but the lawyer is your lawyer. All of his ethical duties -- and some people think lawyers don't have any ethics -- Actually, you're going to hear about that. The legal profession has some of the strongest ethical requirements of any profession.

Lawyers are required to have complete loyalty to their clients, and so Mr. Bennett, even though he was hired by State Farm, he got a lot of business from State Farm, they were an important part of his income, owed duties of loyalty to the Campbells, and he was hired as their lawyer.

Unfortunately for the Campbells, Mr. Summers, who dealt with Mr. Bennett all the time because of Mr. Bennett's affiliation with State Farm, Mr. Summers told Mr. Bennett about the meeting with Brown, how he had been required to alter the report, how Brown had sent out the marching order, "We're not going to pay, we're going to fight."

And so Bennett, from day one, was told, "This [76] is what the big boss is saying." And Bennett, who had never met the Campbells, and had no reason to think he would get business from them in the future, whereas he had a long, ongoing relationship with State Farm, fell in line. And you will hear evidence that Mr. Bennett was expressing opinions that the case should not be settled, should be tried, before he'd even seen the file.

Now, the people that do work for State Farm are trained, in cases with excess exposure -- And I need to explain that. A case with excess exposure is one where the insured, in this case the Campbells, could get hit with a judgment for more than their insurance. That's where the word "excess" comes from.

And State Farm has a manual called the Excess Liability Handbook, and it's not just a handbook, but it's oral training, as well, you're going to hear from witnesses.

People at State Farm are trained in cases with excess exposure to treat the file in special ways. And those ways have to do with padding the files, so that if they decide to gamble with the insured's excess exposure, and the gamble doesn't pay off, the file covers their tracks, so to speak.

And so they're trained, for example, that the [77] attorney, even though he has a duty to evaluate the case for his client, is not to put evaluations in the file, in excess liability cases, in writing, that talk about that. State Farm knows that if someone gets hit with an excess verdict, there's a good chance they're going to get sued for bad faith, and they don't want their own file used against them. So these files have things left out of them, they also have things put in them.

The Excess Liability Handbook, for example, has a section entitled, "Writing self-serving letters." And it explains how someone at State Farm needs to, quote, "strengthen the file by writing self-serving letters in an excess liability case." And you are going to see evidence of self-serving letters throughout the Campbell file.

Your Honor, I've prepared -- and I'm not sure this is the appropriate time for it -- I've prepared a chart showing the different players that I think would be very helpful to this jury. I've shown it to counsel, I'd like to give each of them a copy of it that they might follow along so they start to get familiar with these names.

MR. HUMPHERYS: This was used in the first trial, Your Honor, with very minor modification.

THE COURT: All right.

[78] MR. CHRISTENSEN: It's probably more legible for you to look at the copies you have. You can see on the chart, and I'm referring to the chart entitled "Insurance Picture In The Logan Case." You have Curtis Campbell, Mr. Slusher brought a claim against Curtis Campbell for his injuries, and there was a $25,000 insurance limit that applied to that claim. The parents of Mr. Ospital brought a claim against Mr. Campbell for the death of their son, and Mr. Slusher also sued the Ospital estate.

Mr. Slusher took the approach that there was reason to argue whether Mr. Ospital or Mr. Campbell or both were responsible, so he did what normally is done in legal proceedings, he sued both parties. So Mr. Slusher sued both the Ospital estate and Curtis Campbell. The Ospital estate then filed what we call a cross claim against Curtis Campbell for the death of their son.

Now, the Ospital automobile had two insurance policies on it. The Ospitals were insured with Allstate, and they had $100,000 limit. The car that Todd Ospital was driving that day, he'd borrowed from a friend, a fellow by the name of Brooks. And the Brooks car had a policy of insurance with Farmer's on it with a $30,000 limit. And so there was a total of $130,000 [79] available on the Ospital car to cover the claim Mr. Slusher brought.

Let me quickly go through some of the players for you. The Allstate people, Joyce Zollinger was the adjuster assigned to the file, later contracts Celia Hart. Their supervisor was Paul Brenkman. Mr. Brenkman will be a witness here. Joyce Zollinger now lives in another part of the country. Farmer's, the adjuster assigned to the file was Bill Lithgow.

If you look down, now, at the State Farm team, Ray Summers was assigned to the Campbell case initially. Later he left State Farm and Wayne Ballantyne took over. The supervisors I've

mentioned, Bob Noxon, later it was Jerry Stevenson, Bill Brown was the divisional superintendent, and the defense attorney was Wendell Bennett. I hope that will help you keep some of these names straight.

I've mentioned to you briefly the duties that a defense attorney, even though he's hired by the insurance company, owes to the people that he's been hired to defend. The Campbells relied on Mr. Bennett, followed his advice. They trusted him. There are some form letters State Farm sends out in an excess exposure case, and again, that means the case which could be for more than the insurance, that says, "You can get another [80] lawyer if you want. If you do you have to pay for that lawyer yourself."

The Campbells did not have a lot of money, they asked Mr. Bennett, "Do we really need to have a separate lawyer we're paying for?" He told them that they didn't need another lawyer, and they really shouldn't, his ethical duties are to them. They didn't get another lawyer.

After they'd been sued, they had wanted to go on a mission for the LDS Church, they were able to still go with the case pending. As you know, lawsuits sometimes don't move real quickly, and they were able to go on a mission, and relied on Mr. Bennett and State Farm to look after this matter while they were gone.

Now, if you'll look again at your chart, you can see that Mr. Slusher filed a suit against both Ospital and Curtis Campbell. Todd Ospital's attorney was Rich Humpherys, my partner, here. He was hired by Allstate Insurance to defend the Ospitals. Mr. Slusher's attorney was Mr. Scott Barrett from Logan.

The case proceeded, the one filed in Cache County, proceeded, and the attorneys did what they call discovery. It's the phase of the trial process where the attorneys find out information. One of the most useful tools for attorneys in lawsuits is they take [81] depositions. It's -- And some of you may have experienced a deposition.

But it's where the lawyers get to bring a witness in, they can subpoena the witness if they need to, but the witness is put under oath, with a court reporter like we have here. It's not done in the courtroom, it's usually done in one of the attorneys' offices. All of the attorneys involved in the case get to ask the witness questions, and they're answered under oath. The court reporter then types up a transcript. It's a very good tool to get information.

The depositions of different witnesses were taken in the Logan case, and Mr. Wendell Bennett prepared summaries of those depositions after the witnesses were deposed, which he sent to State Farm. Interestingly, they were not sent to the Campbells.

Those witness statements -- And I'm going to very quickly give you a flavor for those. One of the witnesses deposed -- And when I use that term, "deposed," I mean his deposition was taken. One of the witnesses that was deposed was a Michael Gerber. He was one of the van drivers. The very evening of the accident, so it would have been shortly, maybe within an hour, two hours of the accident, Mr. Gerber wrote this statement for the highway patrol. So this was prepared [82] same day as the accident. This was available, certainly to Mr. Summers initially, was available to all of the attorneys as the case progressed.

Mr. Ospital was actually driving a car called a Mercury Bobcat. I understand that the Mercury Bobcat and a Ford Pinto essentially come off the same assembly line. So sometimes you see witnesses call it a Pinto, and when you see that, it's the same as the Bobcat Mr. Ospital was driving.

You can see Mr. Gerber's statement and drawing, although the drawing's not great, it makes it look like there's two lanes southbound, when there's only one. But you can see Mr. Gerber's statement to the highway patrol that night is very incriminating of Mr. Campbell. It shows Mr. Campbell still out in the passing lane when the Ospital car arrives. I'll leave that up there for just a minute.

Mr. Gerber's deposition was taken June 15th of 1982, and I'm going to give you a little flavor of some of the significant things he said. He remembers seeing a gray sedan, that's the Campbell car. When he first saw the gray sedan he looked out his rear-view mirror and saw the sedan trying to pass all five of their vehicles. The gray vehicle was traveling about 70 to 75 miles per hour when it passed the Gerber vehicle.

[83] He had already started his ascent, that's of the hill in the Dry Lake area, when the gray vehicle passed. He wasn't sure where the solid yellow line started, it may have extended the whole stretch of the road from peak to peak.

He also said, when he was at the bottom of the hill where the road starts to ascend up, he first saw the yellow car, that's the Ospital car, at the top of the hill. He was able to observe the car without any difficulty, there were no vehicles in front of him. The car appeared to be in control, nothing unusual about his driving. He was traveling 50 to 60 miles per hour.

That was significant, because the police officer was indicating he was placing the Ospital car speed at over 80 miles an hour. There was also some suggestion that the Ospital car was bobbing and weaving, and seemed out of control. Mr. Gerber said he didn't see that.

When the yellow car passed the Gerber van the gray vehicle was 150 feet behind him. In his rear-view mirror he saw the yellow car and the gray car pass each other. Which, of course, meant Campbell was still out in the opposing lane of traffic. "The gray car was in the opposite lane of traffic with his right tire just over the center line into the northbound lane." And he [84] goes on with other statements. That'll give you a flavor from Mr. Gerber.

Mr. Gerber's wife, Patricia Gerber was riding in the van with their children. She didn't see a lot, she was taking care of the children, and was, I believe, sewing a jacket. So she did not

really see much. But she made this significant statement, as they were traveling, she was sewing her son's jacket and listening to Mike talk. Consequently she wasn't paying much attention to what was going on.

She said she was preoccupied until Mike made a comment to the effect, quote, "Look at this crazy fool," quote, at which time she looked up from her sewing and saw a car come around to the left and go in front of them. She said the car was a large gray car which was going quite fast, a lot faster than they were.

Another eye witness was David Chipman, who also gave a statement to the highway patrol the night of the accident. Mr. Chipman had kind of a front-row seat, so to speak. When the Ospital car hit Mr. Slusher, it just missed David Chipman. And so Chipman was right in the middle of this thing, so he was a significant witness.

And Chipman said on his statement that night to the highway patrol, "The gray car headed northbound [85] passing with not enough room to do so safely southbound, car tried to avoid head-on collision with gray car, started swerving and lost control, hit head-on with gray van."

Again, he implicated Mr. Campbell in the statement he gave to an investigator State Farm hired later, he clearly placed the blame for the accident on Mr. Campbell.

Mr. Chipman lived in another state, he lived in Wyoming, and it took State Farm and Mr. Bennett some difficulty to find him. When they did find him and discovered that he implicated Mr. Campbell, they did not pass that information on.

Christopher Webb, who was a passenger in the Slusher van, the one that got hit, in a recorded statement given to Farmer's Insurance, said that Campbell forced the Bobcat off the road. Mr. Slusher, in his deposition, said, "Mr. Campbell pulled out into the oncoming traffic lane and attempted to pass all six vans as they were going into the Dry Lake area."

He also said in another place in his deposition, "Mr. Campbell continued to pass the vans and was even with the first van when Mr. Slusher noticed the oncoming car driven by Todd Ospital." He stated, "Todd's car swerved in an attempt to avoid Mr. Campbell, [86] and that Mr. Campbell did not attempt to enter his proper lane of traffic until after Todd had passed him."

Now, Mr. Slusher then put the full blame for the accident on Mr. Campbell. There's several reasons that's significant. If you look at your chart, you will see that if Mr. Slusher was simply looking out for what would be in his best financial interest, there was a lot more insurance available if he'd put the blame on Todd Ospital. And by the time he gave this deposition, that information was known. This deposition was given March 17th, 1982, and the accident was May 22nd, '81. So about a year later.

Officer Parker, the investigating officer, had said in a statement to State Farm that Slusher had told him while he was in the hospital that he thought that Mr. Ospital caused the accident. In his deposition he said, he placed the entire blame on Mr. Campbell. I mention that because that will be somewhat of an issue in the case.

But Officer Parker acknowledged that Mr. Slusher's parents were present. They'd flown in from out of state to be with him in the hospital, because he was very seriously hurt. They were both there when their son allegedly had said that it was Ospital, not Campbell, that was at fault. They said [87] that was never said. Mr. Slusher says it was never said, Officer Parker had no evidence other than his own statement that it was said. And Mr. Slusher's mother remembered the meeting, because she got embarrassed.

She testified in the Logan trial and said, "This officer came in, he was nice and he talked to my son, and I remember my son getting very angry at the officer when he said he'd not given a ticket to Mr. Campbell. And it embarrassed me because I thought my son was rude."

And so there's that evidence, plus Mr. Slusher's sworn testimony that he put the entire blame for the accident on Campbell, even though there was more insurance available if he had given a less honest statement and blamed Ospital. That's Mr. Slusher's testimony.

Another witness to the accident, a Mr. Harding, his deposition was taken in May of 1982, he said that he thought the Campbell car had caused the accident. He also said it was his recollection that the Campbell car was passing four vans.

Now, Mr. Zucca, another eye witness, said the first time he saw the gray car was as his van was in the middle of the Dry Lake area where it was flat. He said the car was just to the side of his van, and he got a [88] glimpse of him, and that was all. He wasn't sure if anyone was with the driver. All he recalls is it was an older man with gray hair.

He said it was a gray car with a black vinyl roof, and he didn't know how fast the car was traveling at that time, but he was traveling 55 miles per hour, because when they started going up the hill they started going slower. He was certain his van was traveling between 55 and 60, and it seemed like the gray vehicle flew right past him.

He also stated that it took about a second for Ospital to pass him from the time he returned -- Excuse me, I'm moving on to Mr. Campbell's statement.

Now, Mr. Campbell's deposition was taken in March of 1982. As I mentioned, he did not feel he was responsible for the accident. He still feels that way. You'll hear testimony that that's very common for people who are emotionally involved not to be very objective about facts. Not to want to believe that they really killed somebody. I don't think that's hard to understand.

But significantly, even Mr. Campbell acknowledged that it was about a second from the time he claimed to have gotten back in his lane to when the Ospital car arrived. Certainly that length of time the [89] Ospital car had to be taking evasive action.

Mrs. Campbell, in her deposition, said she was asked whether or not she saw Mr. Ospital's vehicle at the time they were passing, and she said that she hadn't, but that she wasn't paying attention to him at all.

It was stated again that she thought her husband had cut a little close to the camper, and she said that it was close, but that it was not close enough to alarm her.

I mentioned Officer Parker. He was not a witness, he investigated. His notes reflect, in one place, that the gray car may have caused the accident. Several witnesses told him that. He placed some fault on Mr. Ospital because of the measurements and the speed calculations he made. Alger Harding, another witness, said Ospital was traveling 65 or 70, Campbell was traveling 70 or 75. It was his personal feeling that the Campbell car was the cause of Ospital losing control.

And Joe Zucca testified that the gray car flew right by him, he was going as much as 20 miles per hour faster.

That will give you a feel for the eye witnesses. I've taken time to go through quite a bit of [90] detail, because you need to be armed with these facts as you hear some of the experts. When you hear some of the experts and you know the facts, you won't be as easily swayed or misled by some of the opinions you hear.

With the witnesses lined up against Mr. Campbell, State Farm, you remember Bennett and the lower level State Farm people had their marching orders to defend this thing, not to settle it. Pretty well had to base their defense on Parker's speed calculations, and they hired an expert witness, a man by the name of Bob Dahle.

And their whole theory to defend the case essentially boiled down to claiming that Ospital was speeding. An interesting defense, in light of the fact that he was in the wrong lane, and there was a lot of evidence that Campbell was also speeding. But that was the defense.

And by the way, I should point out to you that the drivers of all the cars involved in the accident had blood alcohol tests, and they were all negative. This accident did not involve use of alcohol. And that's certainly true of Todd Ospital.

Let me tell you quickly, now, about Parker's measurements. Some of these marks were measured, once the tires lock up and start to skid, and that happened [91] with the Ospital car at some point. Those are skid marks. Yaw marks are where a car is turning, or scuff marks, is where a car is turning sharply enough it's leaving some rubber on the road, but the wheel's not locked up. And to a trained investigator they can tell the difference. But you need to remember, Parker was trying to do this at night with a flashlight.

Then there's some way to measure this arc, pull a string across it and measure what they call the center ordinate, and calculate speed. But the experts agree that if you're off even one inch on the center ordinate measurement, it'll throw your speed calculation off by 25 percent. And so it's a very sensitive thing, and you need to get it right.

The next day -- and this was a curious thing -- the next day Officer Parker went back to the scene in the day light, he measured a number, re-measured a number of things he'd done. He found a number of errors that he'd made the night before in the dark, and for reasons that I suppose nobody understands, he didn't re-measure the most critical thing, and that was the yaw and skid marks that he was basing his speed calculations on.

Mr. Dahle was a person with the highway patrol that State Farm hired to give expert testimony, [92] essentially they were hoping Mr. Dahle would be able to testify that this accident was entirely Mr. Ospital's fault, not Mr. Campbell's fault. Mr. Dahle --

Before I say that, let me say this. You're going to hear testimony that one way State Farm tries to win cases and manipulate the court system is by manipulating experts. And you're going to see some evidence of that in this case.

Mr. Dahle had a private meeting with Mr. Bennett. Mr. Bennett, for convenience, it was easier than taking notes, tape recorded the meeting. You'll see a transcript of that meeting.

In that meeting Mr. Dahle expresses the frustration and challenge he's having trying to make the facts fit the theory. He says he's figured it 5,000 different ways. At one point he says, "I know you haven't asked me for my opinion," and then he says, "but," and he gives an opinion that really pretty well puts a lot of blame on Mr. Campbell. Mr. Bennett leaves that meeting, after meeting with Mr. Dahle -- and I assume you recall who Mr. Bennett is -- and drives back to his office in Salt Lake. The meeting was in Logan.

On the way back he dictates a memo to himself that says, "Mr. Dahle can be used to good effect as a witness in this case, but I've got to get him to quit [93] saying things like, 'This was Campbell's fault.'"

In this same time frame, Mr. Dahle runs into the adjuster for Allstate, and he tells her his calculations put the blame on Campbell. And the way we know that this many years later, is the Allstate adjuster wrote a letter to Mr. Humpherys explaining what she'd just heard.

Now, the Campbells were never told that even their own expert was suggesting they were at fault. Instead, they were told just the opposite. And Mr. Bennett did succeed in getting Mr. Dahle to sing the right tune at trial. At trial he said the accident was entirely Ospital's fault. But, not surprisingly, the Logan jury didn't believe him.

The Ospitals, through their insurance company, Allstate, hired a Dr. Watkins, an engineering professor at Utah State University in Logan. He was very experienced, very knowledgeable, he had taught Mr. Dahle in some classes, and testified that when Mr. Dahle got hard accidents to reconstruct, he would come to Watkins for help. They were on opposite sides in this case.

He used several different accepted methods to measure the speed of the Ospital Bobcat, and concluded that it was not speeding.

[94] He reviewed Mr. Dahle's work and found at least fifteen errors in his computations and reconstructions, which demonstrated that Mr. Dahle's conclusion, which was that Ospital was speeding, going over 80 miles an hour, couldn't be true.

Mr. Humpherys helped the plaintiff, Mr. Slusher's attorney, find their own expert. The plaintiff's attorney was someone from Logan who was not a very experienced trial lawyer, and Mr. Humpherys suggested an expert, and helped line up a Mr. Newell Knight to testify on behalf of Slusher. Mr. Knight was a very experienced expert with the highway patrol. In fact, he'd taught Mr. Dahle at the highway patrol school. He'd been doing this kind of work for about twenty-three years.

He came in and explained to the jury it just doesn't make sense that this Bobcat was going 85 miles an hour. And he did some computations in using the weights of vehicles, their movements after the collision. He used the analogy of a cue ball on a pool table, hitting one ball and knocking it. He pointed out that the Slusher vehicle, even though it was heavier than the Ospital vehicle, still had forward movement after the collision, which would, simple laws of physics would point out, if this car's only going about 50 and [95] this was going 83, that's not going to happen. This car is going to knock the other car back.

And so there were two very experienced experts who opposed Mr. Dahle, and the Logan jury found them persuasive.

As part of the investigation of this whole thing, Mr. Bennett, who was hired by State Farm to represent the Campbells, also had to learn about the damages. By damages in this case, we mean the injuries.

MR. HUMPHERYS: Your Honor, at this point Mr. Belnap pointed out to me that, though his name is on the letterhead of Wendell Bennett, that at that time he had left the office of Wendell Bennett for what, about a year, year and a half or so.

MR. BELNAP: I had not been practicing with Mr. Bennett for about a year and a half, and there's a matter that we need to discuss with the court.

MR. HUMPHERYS: We wanted the jury to note that, though his name appears, he was not with Mr. Bennett at the time.

MR. CHRISTENSEN: Mr. Bennett wrote a letter to State Farm, and he outlines the injuries which the medical records reflect occurred to Mr. Slusher. And if I could point you to a copy of this July 7, 1983 letter, you can see that the injuries are very severe. They go [96] on, on to the next page, which I have out of order, and he ends with the conclusion, "There's little doubt that Mr. Slusher had very serious and extensive injuries."

Some of these resulted in some permanent disability for Mr. Slusher. He lost partial use of his left arm. He was a certified welder. He had serious problems with his knee, and a lot of other things. His medical bills had been projected to go in the thirty, $40,000 range. The actual ones he paid were around twenty, and when he couldn't pay any more, he was ultimately able to have some of his surgeries later done at a charitable hospital in Kentucky, I believe it was. So he got a considerable amount of medical care free. But the medical bills were over $20,000 that he actually paid himself, not counting the ones that he was able to get free.

His doctor gave him a disability rating of 50 percent whole man, which is a method doctors have for assigning disability. And you'll hear evidence that that is a very, very high disability rating for someone who's not paralyzed or something like that. So Mr. Slusher's medical bills alone were close to the amount of the Campbells' insurance limits.

And there are two kinds of damages juries award in these kinds of cases, if you get sued for [97] causing the accident. One is your out-of-pocket expenses, medical bills, lost income. Mr. Slusher's potential lost income for the future was huge.

He was a young man. And that amount of the claim was huge. Plus the law also gives people general damages, the pain or suffering compensation for not being able to do the things they used to do, that sort of thing. So there was very, very serious exposure on Mr. Slusher's claims.

As the case was investigated, it was also learned, a lot was learned about Todd Ospital. He was a sterling scholar, with just under a 4 point grade point. He was the senior class president, he had lettered in four sports. And all of these things were taken into account in assessing the value of the life of someone when someone's been killed.

He was the kind of son that every parent hopes that they have. He was a freshman at Utah State in pre-med at the time this happened. There was only $25,000 in insurance to cover that kind of a loss. Obviously Campbell was in serious, serious trouble. He had excess liability, he had excess exposure, and it was State Farm's job to protect him, to advise him.

Mr. Bennett was State Farm's representative in doing so. They had several chances to do it, and they refused. Mr. Slusher needed money, obviously. He [98] couldn't work, he had medical bills. Early on, through his attorney, he said, "If you'll give me the $25,000, which is all the insurance Mr. Campbell has, I'll sign a release, I'll let the Campbells go, I'll leave them alone."

Ospitals didn't want to continue to relive the death of their son, and they said they'd take $25,000 if State Farm would simply do it and get it behind them. And State Farm not only said, "No," but they said, "Hell, no."

And why? It's because to settle it they were going to have to pay $50,000. If they tried it and lost they'd only have to pay fifty, because that was their insurance limit. And so they weren't really risking their money. So State Farm didn't care about what happened to the Campbells, why not roll the dice? They might win. They had Dahle, who was willing to testify it wasn't Campbell's fault, and they had Officer Parker, and some of the

van drivers didn't make real good witnesses, and they had a chance to win. It was not a very good chance, but they had a chance to win.

The issue in these cases, you'll hear from the experts, when an insurance company's looking at their duties, is not whether they have a chance to win, it's whether they have a chance to lose. Insurance is [99] to protect against risk.

Now, State Farm denies that they do this, and you will hear a lot of testimony that they don't even keep these statistics. But we have found in a document called the Excess Liability Handbook, written in the early seventies, just a few years before this case, a study of 222 cases over a six-year period where State Farm insureds had excess exposure. They were in cases where they were at risk to get hit for more than their insurance. And State Farm actually brags in this study about how profitable it's been for them to gamble in these cases.

Some of them they win, some they lose, but their study shows that even when they lose they can beat people down and get them to take little, if any, additional money.

Now, this is illegal. The law says that State Farm owes what is called a fiduciary duty to the Campbells, and anyone else they insure. When you pay your premium, the insurance carrier, by contract, has to look out for your best interest. Has to put, give your rights at least as much weight as they give their own. That's what the law says.

And so it's illegal for an insurance company to gamble with their insured's financial security when [100] there's a substantial likelihood that there will be an excess verdict. And you need to remember that the jury last October already found that's true, that there was a substantial likelihood of an excess verdict, and that State Farm was unreasonable for not settling.

So because it's illegal to play this game, even if it's profitable, if you're going to do it, you have to hide it. Your files can't reflect that's what you're doing. And so the Excess Liability Handbook

explains how to doctor and pad the file, so that when juries like you people see the file, the letters won't say, "Wow, our insured is really at risk. We'd better settle." They will say, "There's no risk in this case, let's not settle it." The self-serving letters.

Back to the Campbells' story. The gamble that was taken here was even worse than it appears, and let me explain that statement. Back in 1981 when this accident happened, Utah had a law that was called joint and several liability. It lasted for a hundred, two hundred years. It got changed later in the eighties. But it was the old law.

And the law of joint and several liability says, if you'll look at your chart again, you see how Mr. Slusher has sued Mr. Ospital -- Actually -- All right, if you have Mr. Slusher, who files claims against [101] Mr. Ospital and Mr. Campbell, the jury certainly, under these facts, with the allegations that were being made, there was some evidence of excess speed by Ospital, and you've heard the evidence against Mr. Campbell. A jury could conclude they're both at fault.

And the law calls -- Well, I'm not going to use the term, it would be confusing. But in the case where both are at fault, then under the old law of joint and several liability, Mr. Slusher had his choice. He could collect it all from either of them. He didn't have to just collect each one, their share.

And let me give you an example of why that's risky. Let's assume the only fault they found on Mr. Campbell was 1 percent. And they found 99 percent on Todd Ospital. An unlikely result under these facts, but I'm giving you an explanation.

Ultimately the jury verdicts in this case were $253,000. Ospital had insurance of $130,000. And remember, he's deceased, he was a young man who really didn't leave anything, and so that's all there was. That would leave $123,000 to be paid.

Mr. Campbell had insurance of fifty. Under the old law of joint and several, even if Mr. Campbell was only found 1 percent liable, if all he had to pay was 1 percent of this, it would be within his insurance. [102] It would be, what, $2,500?

But under joint and several, since Mr. Slusher would be free to collect as much as he wants from either of them, since they've both been found to have some fault, he would collect Mr. Ospital's insurance, and then he would go after Mr. Campbell for the rest. So even a 1 percent fault with a verdict of $253,000 creates an excess problem.

To experienced attorneys and insurance people, this case was a no-brainer. Campbells had absolutely nothing to gain by a trial, and by turning down the offers to settle. It was not a criminal case.

You've heard a little explanation of the difference between criminal and civil. Sometimes in a criminal case you fight because you don't want to go to jail. But there was none of that here. This was simply a civil case over money. Campbells had nothing to gain by going to trial. They didn't even have to admit they were at fault to not go to trial. You can settle and say, "I'm not admitting I'm at fault, I just want this out of my life."

Only State Farm stood to gain. And under the law and the ethical duties that Bennett had, and the legal requirements State Farm had, they were required to tell the Campbells that, that, "This is a risky case and [103] you have nothing to gain by trying it."

The Campbells trusted State Farm, who, you'll hear evidence of this, had promised to treat them like a good neighbor if they ever had a problem. They trusted Mr. Bennett. Mr. Bennett, as their representative, told them that they didn't need another lawyer. And let me touch that real quickly.

State Farm did not want the Campbells to have another lawyer. A lawyer who was looking out for the Campbells' best interests would have, that fast, said, "You have nothing to gain

by this gamble. You are seriously at risk. This case should be settled." They did not want a letter like that in their file, and so the Campbells didn't get a lawyer -- you'll see one letter in the file where Mr. Bennett seems happily advising State Farm, "The Campbells aren't going to ask us to settle, pay the limits."

Bennett, on behalf of State Farm, would take depositions, and hear the evidence I've briefly outlined for you. And I don't purport I've read every statement of every witness, but I think you've got the crux. He would take statements where the witnesses were basically saying the gray car caused the accident, and he'd write a letter to Campbells telling them how great the case was going, and how the facts were showing they weren't [104] at fault, and they didn't have anything to worry about.

Mr. Campbell desperately wanted to believe he wasn't at fault. It was not hard to convince him, and they took advantage of that. Instead -- And you'll hear evidence that part of the lawyer's job, part of the insurance company's job is to be objective, to say, "I know you believe that, but as your lawyer, that's not wise." Part of what lawyers do is help clients see when their emotions are clouding their judgment.

The Campbells were told by Mr. Bennett that he'd never lost a case in Cache valley. And Mr. Bennett, in the trial last October testified, that he tried approximately 100 jury trials in Cache valley.

That didn't quite ring true. We had the clerk in the Cache County court spend many hours going through records, and what the records showed is that Mr. Bennett had tried less than ten cases in Cache valley during the period he was talking about before the Campbell case, and that he'd lost most of them.

Mr. Bennett didn't send the depositions or summaries to the Campbells, simply his letters telling them how well the case was going, and that the evidence was showing they were not at risk.

In private meetings they had had with him, although they didn't have many, because they were on a [105] mission during a good share of this time, he, Mr. Bennett also told them they were safe. Mr. Campbell said, "Mr. Bennett, I bought insurance to take care of things like this. I don't want to risk the things that we have." And he was told he didn't need to worry, he had plenty of insurance. He then said, "Well then, it's up to you." You're his lawyer, "It's State Farm's money, you do what you want to do if I'm not at risk."

Now, it's interesting. Something happened that you'll, I believe you'll find significant. There was a young attorney involved in this case -- you've got to remember, this is quite a few years ago -- Mr. Humpherys, my partner. Who, even though he had not had a lot of experience to that point in his career, and I think this was his first Cache valley case, clearly could see what was going on. And he wrote letters to State Farm saying, "You're acting in bad faith. You're not doing the right thing." On behalf of the Ospitals and Allstate, they wanted the case settled, and repeatedly tried to get them to settle. And they wouldn't do it.

He wrote a letter outlining the risks that the Campbells were being put to, to State Farm, knowing that Mr. Bennett would be required to pass that on to the Campbells. And ethically lawyers can't go talk to [106] some other lawyer's client. You can probably see the reasons for that. Mr. Campbell, or Mr. Bennett passed the letter on, basically sent it with one saying, "Don't pay any attention to this, he's just trying to spook you."

Mr. Humpherys evaluated the case for Allstate Insurance, in March of 1983 told them that he thought there was enough insurance for the Ospital estate, but still suggested settlement was a good idea. The letter goes on to point out how clearly he recognized that State Farm was acting in bad faith.

Finally, Mr. Humpherys wrote to Mr. Bennett and said, "We're about through with discovery, we'd like to see if we

can't get this settled. There's some depositions next week in this case, we want to meet with Slusher's attorney after the depos, and we invite you to join us. If you won't, we're going to go ahead without you." And he said, "And if we do, it probably won't be in Campbells' best interest if we cut a separate deal."

State Farm's response was, "Go ahead, we have no interest in settlement." So on, I believe it was June 3rd of 1983, an agreement was reached between Ospital and Slusher, and that agreement was in two different documents. The first document was a release, where it said for $65,000 Slusher was releasing his [107] claims against the Ospital estate. Another document --

By then, as I mentioned, it was blatantly obvious what State Farm was doing, to people who had any experience to recognize it. It was clear State Farm was acting in bad faith. And Allstate, who, by that point, had concluded that Ospital was not at fault, in spite of early on there was some indication that he may be, because of what Officer Parker was saying about the 80 miles an hour, Allstate, who didn't think Ospital was at fault, but couldn't be sure -- this is an uncertain business -- agreed to pay $65,000, but thought it was fair that they have an opportunity to get that money back if State Farm didn't settle, and the jury in Logan decided the case.

And so the agreement allowed for Allstate to get some money back, if that's what happened, and if the jury did find it was all Campbell's fault. The agreement also provided for Slusher and Ospital to work together to see the case through in Logan, and to, if there was a bad faith case against State Farm, to pursue that later. And with those conditions hammered out, Ospital settled with Slusher, and took away any risk of an excess verdict for the Ospitals.

Now, Allstate had the same duties that State Farm did. There were several reasons that the Ospitals [108] stayed in the case after they settled. One was that they still had a cross claim for the death of their son against Mr. Campbell. And of course they had to stay in the case for that.

Another reason was, as the law was at that time, for this kind of a settlement agreement, where everybody didn't settle, the law required that the fault of everybody get decided in the same case. And another reason was the agreement that they'd made.

After this agreement, which was June of '83 -- the trial wasn't until September--there were again efforts to get State Farm to settle. And Mr. Bennett wrote to State Farm and said, during this time frame, and said, "I think they've settled, but I think they're not telling me because they're trying to put pressure on me to pay the limits."

And on the morning of trial, in September of 1983 in Logan, it was discussed with the court that there had been a settlement just before the trial started, so State Farm went into the Logan trial, knowing that Slusher and Ospital had settled.

During the trial there were some opportunities to settle. Mr. Humpherys, Mr. Bennett said it seemed like a daily ritual during the September '83 trial in Logan, Mr. Humpherys would say, [109] "Mr. Bennett, this isn't really going very well for you, why don't we settle?" And Mr. Bennett, like clockwork, would say no, after he'd consulted with State Farm.

The Campbells, for the first time in the trial, heard how bad the evidence was against them, and were actually very, very shocked at what they heard. They asked Mr. Bennett, "Isn't this a problem for us?" And he reassured them, "I can handle it, it's under control." Clear through the trial State Farm would not make any offer.

Now, in the Logan trial, Mr. Barrett, Slusher's attorney, as I mentioned, was not real experienced, he didn't put on all of the damage evidence he might have. He didn't have an expert, for example, compute Mr. Slusher's lost future income. And so the verdict could well have been much higher than it was. And you'll hear some testimony on that.

But even with that factor, the Logan jury found Mr. Campbell 100 percent at fault, they awarded Mr. Slusher $200,000, and they awarded Todd Ospital's parents $50,000 for the death of their son, plus approximately $3,900 for his burial expenses. So the verdicts totaled over $253,000. With the Campbells having insurance of $50,000.

Now, you've heard what State Farm has done in [110] their treatment of the Campbells, which, as I've mentioned, another jury has already found was wrong. You haven't heard why they did it. And in a way, you're, I guess, privileged to get to hear why. The jury last October just heard what they did, but they didn't get to hear why. Mr. Humpherys is going to explain that. He'll also explain to you that, even after the excess verdicts were entered against the Campbells, that State Farm still would not protect the Campbells.

I'm about through, so if you'll bear with me. We submit to you the evidence will show that State Farm intentionally, or at least in reckless disregard of the Campbells' best interests, misrepresented to them the risks that were being taken. And of course, Mr. Summers, State Farm's own employee, has admitted that he did that.

A quick comment on Mr. Summers is interesting. Right during this time frame there was a falling out between Summers and State Farm. Summers was either fired, or forced into early retirement. He brought his own suit against State Farm, which he ultimately lost. But the significant thing is why he lost that suit.

He came out in that suit that there were 150 [111] files, State Farm files, that Summers had falsified documents in. State Farm admitted that in that suit, their own files, by their own employee, and Mr. Summers admitted it. And the court said, "Well, if you did that, I guess you should have been fired."

But the significant thing in this case is, Summers says he falsified documents in this file. And so where State Farm has already produced evidence that he did it in 150 other files, it's

not hard to believe he would do it in 151 files. And when you compare the documents you see with the facts I've explained to you, they won't jive. You'll know that something has been done with some of those reports.

As part of the misrepresentation perpetrated on the Campbells, Mr. Bennett, as a State Farm representative, repeatedly misrepresented to them the risks that were involved, and he misrepresented to them that they didn't need an attorney. State Farm promised the Campbells peace of mind, and protection when they bought their insurance. They also promised them they'd treat them like a good neighbor, and they intentionally or recklessly didn't do it.

The evidence that you'll hear will demonstrate to you that this was not an honest mistake, or an honest error in judgment, but part of a widespread [112] scheme at State Farm to mistreat the people it insures, and others, to increase its profits.

We appreciate your service here. A lengthy trial, as I mentioned, we think it's a significant one, a very important one, not just in Salt Lake. You, as jurors, are the conscience of the community. There's a lot of criticism of the court system, and we have a lot of problems. I'm sure all of us expressed a little frustration in the last two days at the slowness.

But it's an important civic duty, and it is great to live in a country where little people can fight a big, rich corporation, and get a fair hearing. You're going to hear evidence that even the insurance commissions in Utah and around the country are unwilling or inept at protecting people against abuses.

It's been a long, hard road for the Campbells to get here, and we appreciate your taking the next few weeks to hear us out. We have confidence that you'll do the right thing, that you'll be fair. And again, we thank you for your service.

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EXCERPTS OF TRANSCRIPT OF PLAINTIFFS' OPENING STATEMENTS: L. RICH HUMPHERYS, ESQ., JUNE 6, 1996

[Vol. 3, R. 10258, commencing at p. 119]

* * *

THE COURT: Back on the record. Mr. Humpherys, I guess it's your turn.

MR. HUMPHERYS: Thank you. Ladies and gentlemen, my name is Rich Humpherys, we were introduced a few times.

A couple of things that you need to be aware of. Mr. Campbell, Curtis Campbell is not in good [120] health, and he is semi-dependent, and sometimes more dependent than others. As a result of that, Inez, his wife, who sits here at the table, will not be able to be with us during the entire time. She will, depending upon the needs of her husband, be required to be with him from time to time.

And we are hoping that he will be able to come Tuesday, assuming his health allows. Sometimes, we don't know from day to day how well he's doing, but we're going to try to have him here Tuesday to give what testimony he can.

Now, one thing that may not yet be clear is, for what purpose is the jury here? Why are you called? Since it's already, we've already had two other trials, why are you here?

Well, let me, first of all, explain why you are not here. You're not here to re-decide the Logan case. That's been tried, it's been resolved fully, and I'll explain that in more detail. You're not here to determine whether State Farm acted in bad faith. That, likewise, has been determined last November by the prior jury.

What you will be determining in the course of this trial is whether or not State Farm is guilty of fraud on the Campbells. Mr. Christensen outlined some [121] of the elements of fraud, and the judge will give you a detailed instruction as to what

the law is regarding fraud. But that's one issue you'll be deciding, whether or not State Farm fraudulently acted toward Campbells.

The second is whether State Farm caused severe emotional distress on the part of the Campbells, whether they intentionally or recklessly caused that emotional distress and emotional trauma.

A third issue which was introduced was whether or not the actions of State Farm were reckless. A reckless indifference, or they acted with intent or malice. A reckless indifference toward the rights of the Campbells. And if so, that is the basis upon which punitive damages may be awarded.

You'll hear that punitive damages are not necessarily awarded with simply a finding of bad faith. There needs to be this additional element, that they either intentionally acted toward the Campbells in a wrongful way, or that they acted with malice or with reckless indifference toward the health, safety, and rights of the Campbells. If so, then you will be called upon to assess the punitive damages which would be appropriate against State Farm for what they've done.

You'll also be asked to evaluate what damages the Campbells have suffered, and will make an award of [122] the amount which you feel would compensate them for the damages that they have suffered.

Now, these are called compensatory damages. There is a difference between compensatory and punitive damages, and it's important that you keep the distinction between them. They are dealt with differently under the law, there's a different legal standard upon which they're based. The purpose for each of them are quite different, and so you have to deal with them separately, as the courts have to deal with them separately, and oftentimes there are issues on appeal which deal with damages. And as long as they are dealt with separately, then there should be no problem.

Now, compensatory damages are designed to compensate someone who has lost, or lost in some way, or been damaged or injured in some way. The law does not distinguish between a physical injury, such as an arm cut off, or emotional injury, or emotional trauma. They are both compensable under the law. Most of the Campbells' damages, unlike Ospitals, who lost their so nlike Bob Slusher, who sustained very serious physical injuries, the Campbells sustained very devastating emotional injuries, and I'll explain a little bit more in a minute.

In terms of out-of-pocket loss to the [123] Campbells, there was not a lot, and I'll explain, as we get into that, the actual out-of-pocket loss to the Campbells as a result of the actions of State Farm.

The punitive damage, on the other hand, has a different purpose. Punitive damages are designed, first of all, to punish, punish wrongdoing. Second, it is to deter, or to dissuade, or to convince the party who has been guilty of the wrongful actions, never to engage in that activity again, as a healthy warning that that should never be done again. And so you can see the difference between the two damages now, and why the two are unrelated for purposes of your determination.

So that's, in essence, what you'll be asked to do. Now, there's one additional element that you'll be asked to resolve, or decide. There is also a claim on behalf of the Campbells for the attorneys fees which they, and expenses which they have incurred as a result of the legal actions.

Part of it relates to their own personal attorneys that they hired right after the Logan verdict. Their names are Brent Hoggan and Miles Jensen. They actually incurred approximately $1,000, not a lot, as they helped the Campbells with this effort of the excess judgment and verdict.

In addition, they're seeking attorneys fees [124] for having to bring this action, and the loss to them that they would incur as a result of the award of attorneys fees, or the attorneys fees which they would incur.

You will not be deciding the amount of attorneys fees, nor the amount of expenses or costs. That, the court will take care of after the jury, or after the verdict. But you will be deciding an important question, and the question will be something along these lines.

Was it foreseeable to State Farm that the Campbells would incur attorneys fees in having to resolve this problem? Was it foreseeable that they would incur expenses and costs in trying to resolve this with State Farm? If the answer is yes, then the court will deal with it at that time. If the answer is no, then there would be no recovery for attorneys fees, at least that State Farm would pay for.

All right, so those are the issues which now you will be looking at to decide. I'd like to take them somewhat in order. First of all, compensatory damages. What I'm going to be explaining is what took place after the verdict in September of 1983, and bring you up somewhat to the present time.

The Campbells, after reeling from the shock [125] of having an excess verdict rendered against them, for years they thought they were not at fault. They were told they were not at fault. They believed it, with all sincerity, and they still believe it. And I don't doubt their sincerity, you'll hear that.

Nevertheless, after all of that, and with that kind of a setting, they were told by a jury that they were 100 percent at fault for this accident. And not only that, that they faced a judgment far in excess of the insurance available to them.

You're going to hear from family members who were present at the time the verdict came in that will describe how Mr. and Mrs. Campbell looked, the shock and the horror that they had as they were facing the concept, the very thought of

having this excess verdict rendered against them. They will describe the devastation, the depression, the immediate change in their physical and mental and emotional outlook. How they withdrew from public.

Within a couple of days, totally not knowing what to do, Curtis' brother, Don Campbell, said, "I know some good attorneys, we need to go talk with one." And they went to Brent Hoggan and Miles Jensen. They are two Logan attorneys.

They then portrayed what had occurred prior [126] to the trial in Logan, and immediately, even though Mr. Hoggan and Mr. Jensen will tell you that they are not experts in bad faith, which is a speciality in the law, it's a speciality area in the area of insurance law, they will say, "We aren't specialists in this area."

But immediately they could identify that there was bad faith that occurred, and they wrote a letter to State Farm outlining all of the wrongful conduct that they were able to glean from the descriptions of Curtis Campbell and Don Campbell and the other information they had. And they immediately made demand upon State Farm to protect them, to pay the excess judgments, and to resolve their duties, and to settle their duties that they have breached and owed to the Campbells.

You'll hear how Mr. Campbell, as he faced the overwhelming thought of losing property, assets, whatever he had, was concerned, and he described this to Mr. Jensen and Mr. Hoggan. And Mr. Jensen had him prepare a list of all of his assets to determine whether he could even respond financially to this excess verdict. And within the next two months you will hear how they went through this and analyzed it and tried to figure out whether there was even enough assets to cover [127] this, and what it meant, whether it meant bankruptcy, or whatever.

Now, to really understand how devastating this was to Mr. Campbell particularly, but both Mr. and Mrs. Campbell, you need to understand a little history about Mr. Campbell.

Mr. Campbell has been married four times. Inez is his fourth wife. His first wife, after having a few children, was murdered in the northeast, at home, by an intruder who came in, broke in, and killed her. He then was faced with a struggle of trying to keep his children from the state agency that said, "You're a working person, you can't take care of the children without a mother that's home with the young children." I believe there was a toddler at the time.

He had to fight that to keep his children. Later on, he married again, and it was about at this time, or sometime during the second marriage, around 1970 or so, he had a stroke, a very bad stroke, that left him mostly paralyzed. His wife, fearing the future and the need to completely take care of him, and having a dependent spouse, left him and divorced him.

He later remarried again. His third wife contracted cancer and died within a couple of years. He finally married Inez, who's a jewel. You'll have a [128] chance to meet her, she's a wonderful person.

But Inez knows, probably as well as anyone, how much Curtis has suffered in his life, as he has seen things taken from him beyond his control, over which he could do nothing, and the struggles and fights that he has had. Now, he did recover somewhat from his stroke. He was left with very little residual effects. A little bit of slurred speech, which was why some of the witnesses, you'll hear, thought he may have been drinking at the time of the accident. There's no evidence of alcohol. But they thought he had, because of his slurred speech.

He had a little bit of a tremor, or some problems with his fine-tuned dexterity, but otherwise he was in good shape. He was able to walk, get around and talk and certainly he was totally competent mentally and physically for all but the very limited, refined mechanisms of the hands and so forth.

But as you begin to understand these circumstances, you begin to understand how devastating it was to Mr. Campbell and Mrs. Campbell to have had this excess verdict rendered against them, and the thought of losing what they had.

What Mr. Christensen did not talk a lot about to you was the fact that Inez has likewise substantially [129] suffered through this experience. When they married they determined to make their marriage a partnership, as marriages should be. She had her own property, he had his, they began to transfer ownership in their home and so forth into joint ownership. And when this judgment came out --

Let me just explain a little legal concept regarding judgments. Once a judgment is entered, it becomes a lien on all property owned by the person against whom the judgment is. It's an automatic lien. And nothing needs to be filed, it's a legal lien that just automatically attaches to property.

Inez now, having just transferred her properties to her husband's name, well, to both of their names jointly, creating a partnership, as in a marriage, now was faced with having her property, likewise, liened and subject to execution by the excess judgments.

She will talk about how much fear that she had in losing what she had. She will talk about the future, as she was considering her husband, who was digressing, decreasing in health, had a history, quite a complicated history of problems, was getting Parkinson's disease, as it was in its early stages. She could see the future being very bleak, and this deeply sent her into depression.

[130] Now, as Mr. Christensen said, and I think I need to emphasize, we are not claiming that State Farm caused or enhanced the Parkinson's disease. That is independent. But you're going to hear a lot about what effect it did have. And Dr. Hurst, who I understand will be called, will testify about what stress does to one who is already particularly vulnerable,

as Mr. Campbell was. He will talk how stress to a normal person affects them in very adverse ways. It's a killer, I think as he described it. Severe stress can aggravate anything, and all kinds of things in one's life.

Now, when someone has Parkinson's disease, as Mr. Campbell had, he is particularly vulnerable, he's fragile. And with the history he has had, he was particularly fragile. And so the events of what transpired as a result of the excess verdict were devastating on him. He had a little high blood pressure before the verdict, bouts of it. Nothing terribly serious, but some. After the verdict, he was treated medically for high blood pressure, and continues to be.

You'll hear a great deal more about the effects of stress, and what kind of effect this had on the Campbells. We can't exactly define, I wish we had the mechanism, a piece of equipment that we could plug [131] in and wrap around the Campbells and tell you exactly what was caused by State Farm and what wasn't. It's impossible to do. I wish we could. But in the meantime, we have to make valid judgment calls, and do the best we can with our opinions, because clearly it affected them. To what degree is your decision.

Let me talk to you a little bit about the events that transpired post verdict. I've related the meeting with Mr. Hoggan and Mr. Jensen. They began to consider all of the alternatives of ways to protect the assets of the Campbells from execution. They began to consider a claim against State Farm, and even threatened to bring a claim against State Farm if they didn't take care of them, and if they didn't protect them and pay these judgments. They continued to make demand on State Farm, "Pay these judgments, now."

At the same point in time, Mr. Ospital, or Mr. and Mrs. Ospital were writing letters to State Farm demanding that they pay the judgments in excess of the policy limits because they'd allowed this to happen to the Campbells.

Mr. Slusher wrote a demand letter to State Farm, and outlined how this was a result of State Farm, pay it. State Farm refused. It totally refused to pay the judgment.

Two months after the verdict, you'll see a [132] letter, finally State Farm offers its policy limits. But only on one condition. That Slusher, Mr. Slusher and the Ospitals release all of their judgment.

Now, one thing Mr. Christensen didn't describe to you, before the trial in Logan there were letters that were sent by both Ospitals and Slusher, separately from their attorneys, to Mr. Bennett and State Farm, demanding that they settle for $25,000. And if they would pay the $25,000 to each party, they would release their claims, go home, and leave Mr. Campbell alone. They would fully settle and resolve the matter.

State Farm wrote back and said, "No, we won't even offer you a nuisance value of $500. We will offer nothing."

Now, in those letters, the Ospitals and Mr. Slusher told State Farm, "If you force us to go through a trial, we are not going to settle again for the policy limits. You're not going to drag us through this emotional experience and this trying experience, and then expect us then to take only your policy limits."

Nevertheless State Farm still maintained their position of offering absolutely nothing. And true to form, State Farm finally offered their limits and said, "Okay, take these $25,000 and settle the case." [133] And Mr. Slusher and the Ospitals said, "No, it's too late. We gave you that opportunity, it's now too late."

By this time, Mr. Slusher and the Ospitals had also suffered a great deal, as they had to relive that accident, and to have Mr. and Mrs. Ospital consider for an entire week or more, listening to the events that transpired that resulted in the death of their son, see the photographs -- there are many, twenty, thirty photographs of the ugly scene -- to deal with

that, to hear everyone talk about it, was a very trying experience to the Ospitals.

They could see it was clear bad faith on the part of State Farm, and they knew that State Farm would be ultimately responsible for paying the full judgments. So they made demand and said, "No, we will not take anything less."

Now, Mr. Slusher will describe to you how he had a lot of medical bills, even though he had settled for $65,000, a lot of that went to attorneys fees and court costs. And his own expenses, and he did not have even sufficient money to pay all of his medical bills after the trial. So he needed money, and he had talked to his attorney about executing on the Campbells' property, and expressly said, "I've got to have some money, I don't know what we can do, I'm in a world of [134] hurt and my future looks pretty ugly."

Mr. Barrett, who represented Mr. Slusher, said, "Well," he wrote a letter to Bennett and said, "We're going to proceed with execution against the Campbells' property unless we can work out some kind of deal which makes it, gives some kind of security to Mr. Slusher."

And the Ospitals, likewise, wrote Bennett and said, "We are going to proceed with execution unless we can work out something."

Mr. Bennett by then knew about Hoggan and Jensen, and wrote and said, "He's now got a personal attorney. Even though I'm still representing him on behalf of State Farm and Campbell, I'll continue on, but now Hoggan and Jensen is representing him." So there was contact made about getting together and trying to work out some kind of arrangement that could resolve this problem.

By then, Slusher and the Ospitals and Campbells all knew that they had been victims of State Farm's bad faith, all of them had. Not that they got together. I don't even think that they've even ever had communications with one another, the Ospitals, Slusher, and the Campbells.

But they all sensed and felt the same thing. [135] Now, there was a fair amount of anger that, it was understandable, as these people sensed and felt that they were victimized by the actions of State Farm. They forced them into doing what they were doing. Not allowing a resolution to this problem, but keeping it open, unresolved. There was no closure on the death of Todd. It was complete, it continued to be open.

Finally, in January of 1984, about four months after the verdict, there was a meeting that took place. Mr. Hoggan and Jensen was there, Mr. Campbell was there, Mr. Barrett, and myself. You'll see the notes that relate to that meeting. There were discussions, negotiations, what could be done. You'll see the notes and what transpired.

But eventually the parties reached an understanding of some kind, that if there could be a bad faith action brought against State Farm to rectify this, then Mr. and Mrs. Ospital and Mr. Slusher would be willing to forego taking property away from the Campbells.

It was contingent upon the fact that the judgments would be upheld, there were some terms negotiated back and forth, over a period of almost a year negotiations went on, research went on, parties were going back and forth with the terms. And finally, [136] in December of 1984, a contract was entered into.

That contract between the three parties, they were not together in doing this, this was primarily done long distance, if you will, as the parties would communicate through correspondence and send proposals and discuss it by correspondence or by phone, but this is what ultimately came out of this agreement. And this will be an important document, you'll see it over and over again at trial.

First of all, that before Mr. Slusher and the Ospitals would agree not to execute and take the property away from Campbells, Campbells would have to agree to bring an action

against State Farm for bad faith to try and recover for the damages. Campbells were resolved, as well, in doing it. This was not something that was foreign to them. They had already thought about it. Their own attorneys were suggesting that that action needed to be taken.

Now, in turn for foregoing the money that they could have otherwise taken away from Campbell, it was agreed upon as follows. That Mr. Campbell would pursue the claim; from whatever recovery was made, that that recovery would be split among the parties, 45 percent to Mr. Slusher, 45 percent to the Ospitals, and 10 percent to Mr. Campbell, after the costs and expenses [137] were paid.

Mrs. Campbell was not part of that agreement. That is important for you to realize. Her claim is separate, and not subject to that agreement. Her claim was separate in that she suffered her own damages as an insured of State Farm, and whatever is awarded in her behalf goes directly to the Campbells, or to her, whereas that which Mr. Campbell may suffer was divided on that basis.

Now, there were a lot of ifs and question marks, you'll hear that the law of bad faith was not well developed. There were questions on the part of Slusher and Ospitals whether they'd even get paid their judgments. They believed that factually it was supported, but there was no guarantee. And certainly State Farm had shown a propensity to be very stubborn and play hard ball.

Now, nothing really happened after that. Let me go back to that '84 agreement. In '84 the court has ruled that because the Campbells' assets were not at risk, that is there was an agreement that no one would execute on the assets of the Campbells, the court has ruled, from that point on, the Campbells cannot recover as a result of their emotional distress that occurred after, or that was caused by events thereafter. And [138] that's a ruling of the court, and we'll have to accept that.

But the court has also ruled that, to the extent there were conditions created prior to that December of '84 agreement which linger on, or the effects of those conditions or trauma lingers beyond the '84 agreement, that that is recoverable.

Nothing really happened -- Well, let me go back and tell you what happened from the verdict. The verdict was entered about mid to late September, '83. Thereafter State Farm filed motions, which was appropriate, to try and set aside the verdict, to try and get a new trial, to do what they could to set it aside.

In November, sometime in November the trial judge said, "No, the verdict stands, it is appropriate, it's legitimate," and he would not set it aside nor grant a new verdict.

State Farm then appealed. At that point in time, the appellate court, the Supreme Court of Utah, was very, very backlogged, and unfortunately it was not resolved until 1989 through the appellate process. So there was a period of time where not a lot happened.

During the appeal process, after the '84 agreement, December of '84 agreement, nothing really [139] transpired until the first part of 1986. At that time Mr. Hanni and Strong and Hanni stated that -- Well, let me back up, here, there were a few things that were happening that I didn't mention.

Mr. Bennett continued be, to represent the Campbells, despite the trouble that became apparent. Unbeknownst to the Campbells, State Farm went to Mr. Bennett and said, "Mr. Bennett, we're in trouble, here. If we don't post a bond to cover the full judgment on appeal, then we can't prevent Mr. Slusher and the Ospitals from executing on the property. But if we post a bond for the full amount, $200,000, approximately, then they can't execute. But we only have a policy for fifty. What do we do?"

Mr. Bennett said, "I'll research it for you."

Contrary to the interests of his client, Mr. Campbell, who he owed his highest duty, who he was representing, he then proceeded to research, in behalf of State Farm, whether or not State Farm had to post a bond for the full amount. And you may not fully appreciate the meaning of this, but this is a clear conflict of interest for an attorney, a blatant violation of his ethical duty.

He proceeded to render a multi-page opinion to State Farm telling them that they did not need to [140] post a bond for the full amount. The result of that would mean that Mr. Campbell would remain exposed. So he was now rendering advice contrary to the Campbells and in favor of State Farm during this period of time, unbeknownst to Campbell, giving Mr. Campbell no opportunity to even go explore the issue himself.

Also, the Ospitals filed a garnishment proceeding shortly after the trial in Logan, trying to garnish the $25,000 policy limit. And guess who defended State Farm? Mr. Bennett. Mr. Bennett was representing the interests of State Farm, contrary to the interests of Mr. Campbell. And yet he would not disclose that to the Campbells, and did not take any measures to try and distinguish his conflicting duties.

You'll hear a lot of other conversations between Mr. Campbell and Mr. Bennett, as Mr. Bennett manipulated and distorted the truth as it was being portrayed to the Campbells, and where Mr. Bennett took the position of State Farm over his clients, the Campbells, without any knowledge on the part of Campbells.

All right, now, going back to '86. Mr. Hanni's firm, Strong and Hanni, who are now representing State Farm in this case, made an offer in a letter, it was sent to my attention. In the offer there [141] were various negotiations offering less than the full judgments, but more than the policy limits, and finally it culminated in an offer in February of 1986 that said, "All

right, we will pay the full amounts of the judgments, if everyone will waive the bad faith claim." Waiving it means releasing it, forgetting about it, settling it, it's all over.

By this time, the parties had been put through a lot, and they were unwilling to release State Farm of their bad faith claim. That was communicated back to Mr. Hanni, that the parties did not, unanimously felt that they did not want, they would accept payment of the judgments if they would pay them, but they would not release the bad faith claim.

State Farm refused to pay the judgments unless there was a release. Now, this becomes important, because you're going to hear from some of the experts about violations of insurance law and practices. And one, a primary standard in the industry is, as an insurance company, you don't try and bargain a claim which is clear to try and force someone to release another claim.

And this is what State Farm was attempting to do. "We'll pay the judgments, which are now quite owing, and very real, but only if you release this [142] claim, here." And you'll hear how that violates the standards in the industry, the regulations of the insurance department, the Unfair Claims Practices Act, and many other kinds of standards set in the industry. Nevertheless, they did that.

Now, later, in a pleading in August of 1986, they represented to the court that they would pay the judgments in total if it were affirmed on appeal. They offered, there was no agreement to pay them, they just represented to the court that they would.

Again, nothing really transpired until 1989, when the Supreme Court finally affirmed the verdicts and said that they stand. At that point State Farm, as they had represented to the court they would do, sent a letter requesting that we settle the judgments. They paid the full amounts of the judgment, including interests and costs, and there was

satisfaction signed in behalf of the Ospitals and the Slushers to completely satisfy the underlying judgments. That was done.

But there remained yet the bad faith claim. And the parties then, pursuant to the agreement in 1984, filed the action against State Farm in August of 1989.

Now, during, since 1989 there have been various things that have transpired, some of which you may hear about, some of which is not important. There [143] were a couple of appeals, there were some other actions that took place. But what's important to know is that, the trial last fall took place on a limited basis, the only issue was looking at the claim file of Campbell, and looking at the events of the accident, and did State Farm act in bad faith, and the jury found that they did.

Now we move into the second phase, which is your involvement, and I've described that.

Now, as I mentioned before, and as Mr. Christensen addressed with you, and that is, why? Why would this have happened? After all, they had to pay Mr. Bennett a lot of money to defend Mr. Campbell. Why on earth would they ever fight this? What motive is there in fighting claims like this?

That gets us to the area of the punitive damages, the nationwide pattern and practices of State Farm, the predatory nature of what occurs on claims for the motive of money and profit.

There are three areas that you're going to hear about. Three primary areas of what the pattern and practice involve. The first area is that State Farm cheats, deceives, and uses wrongful claims practices to avoid paying fair value.

The second area that you're going to hear about is that State Farm then conceals its evidence that [144] it is doing it. And the third area you're going to hear is that State Farm

uses the legal system to take unfair advantage to try and, when they do get caught, to avoid responsibility for it.

Now, it's very important, and I want to say this at the outset so that no one has any question, I do not believe, nor will we contend that everyone at State Farm is evil or dishonest or unfair. That is not true, and we will never contend it, and I don't want anyone to think we are. There are many good people at State Farm, there are honest people at State Farm. There are people who earnestly try to pay what is owing. That's not what we're talking about here today. We're talking about a corporate philosophy that encourages, rewards, induces, and coerces many of its employees to do what I just described.

Now, cheating, defrauding, deceit, wrongful claims practices, those are harsh words. I don't use those words lightly. I understand the seriousness, the gravity of those words, and I want you to know that I am not using them lightly. There is substantial evidence that that is going on, on a wide-scale basis.

First of all, let me give you some areas where you will be seeing evidence. The corporate philosophy, the attitude of State Farm will first be [145] manifested by the manuals that you'll be looking at. The manuals which have been partially referred to by Mr. Christensen. The smoking gun which is called the Excess Liability Handbook, which has incredible statements in it. You only heard some from Mr. Christensen.

You're going to see some other smoking guns, such as Article 12 of the superintendent's, claims superintendent's manual. Superintendent, now, is an office, or an officer above the claims handling adjusters, the people who actually deal with the public and settle claims. It's the next step up. A superintendent --

Well, let me do this. What I've done is, I've prepared a little diagram of State Farm's organization as it applies to

this case--we've shown it to opposing counsel -- it just has the division, or the levels listed, and the names of the people from each level. This will assist the jury in knowing the names as we talk about them, and know where they fit.

Now, you'll see on this particular chart, of which I have an overhead of, at the very top level there's the executive corporate office, and you'll see some names off to the right. You're going to see some of those names, or hear about them, or hear some of [146] their testimony.

Below the corporate office you have general claims, which sometimes is referred to as part of the corporate office. They're their corporate headquarters in Bloomington, Illinois. But general claims is not part of the executive part, administrative executive part of the company. General claims are the corporate people who manage the claims throughout the country.

The next level is the regional office. There are 28 regions in the country. Our region is the mountain states region, it comprises Colorado, Utah, and Wyoming, I believe. Some states are so large that there are multiple regions within a state, such as California.

The next level down is divisional. There are a number of divisions within a region. In Utah, I believe there are three divisions, maybe two. Back at the time when this claim was being handled there may have only been one. To give you an idea of the size of a division. And the divisional superintendent is the person in charge of that division for claims purposes. And the person involved was William, or Bill Brown, he's referred to as Bill Brown. He's the one that instructed Mr. Summers to alter the report, to change it from liability to a non-liability.

The next level down is the claims [147] superintendent, sometimes it's just referred to as a superintendent. That was Bob Noxon, the immediate supervisor of Mr. Summers. And

then finally, at the lowest level in the unit, there are claims adjusters. These are the people that actually work with the people in settling and offering claims.

Now, with that background, I'll continue to describe for you the evidence that you're going to see regarding the manuals and other training material.

You're going to see in Article 12, which deals with settling claims, such as how adjusters are taught to carefully manipulate the claimants, not disclose what's owing, and to get them to sign a release very early on. And if these techniques are followed, it represents in this manual that over 50 percent of the claims will settle for the medical expenses only.

Now, you'll hear under the law that that is not all that's owed. There are lost income that's owed, there may be pain and suffering, there may be a number, a multitude of other things that are owed. But it says, right in the manual, "If you follow these principles, you can settle up to 50 percent of these claims for only medical expenses." And you'll see how that is used to deceive people, and through non-disclosure and through other manipulative ways, the adjusters can effect a [148] settlement for less than fair value.

You'll hear about a training conference of the divisional claims superintendents, incredible things that go on as they are trained to misuse the legal system in trying to avoid the accountability to the courts and to the claimants to what they have done. You're going to see internal memos and other things.

The next area that you're going to see that talks about the cheating and the deceit is an incentive program. They have, State Farm has had a number of incentive programs whereby employees are rewarded for paying less than fair value.

One of those is what's called a PP&R program, a performance, planning, and review. Now, that is essentially a very appropriate kind of thing to do. You plan objectives, you write them down, you seek it, you try and go out and accomplish your objectives. In substance it's a very fine program.

But if it's misused it can be very, very lethal. Promotions, salaries, even the jobs are dependent on how well they follow the objectives that are set forth in the PP&R forms that they do. The annual review of these are 45 days before their salaries and promotions and jobs and so forth are determined.

What happens is, right from the top, right [149] from the president's office, President Edward Rust, he issues once a year what's called a president's forecast, which describes what he wants to have done in the next year. That is passed on down through the company, and at each level they produce a new plan consistent with the president's forecast.

Now, here's how State Farm uses this that results in the cheating and the misuse of the claims process. They have what's called average paid claims. Now, this is a very difficult concept if you're not familiar with these, and I'll go slow and hope that you'll be able to understand what I'm saying.

What State Farm does is, they take an average of all of the amounts paid in any given area, and they average them in some way, and then they set down on their PP&Rs of their people, "Reduce average paid claims, or costs."

Now, think about it for a minute. If I'm a good, conscientious adjuster, and I'm trying to be as fair as I can, and I pay fair amounts, what happens if my superintendent comes to me and says, "Reduce them"? Not just maintain the same as last year, but reduce them this year, 5 percent. Reduce them 10 percent from the year before. What do I have to do to reduce it? I have to cheat, or I have to pay less than fair value. If I [150] don't, I won't make it.

And inflation each year raises the costs and expenses of claims. And so by imposing upon me, at the risk of my salary and job, the duty to reduce that average amount, I am, in essence, being subjected to something that I either have to cut corners, I have to compromise, I have to do something that is not proper, in order to arrive at that goal.

Another is reducing pendings. You'll hear what that means. Pendings means how many claims are out there. They have to reduce the number of claims that there are outstanding.

Another is increase first contact settlements. Let me tell you what those are. If you've had an accident, you've been injured, or there's a problem, I run out as an insurance adjuster and try and contact you and say, "Okay, what are your problems? Okay, here's a check, sign right here." And it's a release. A release of everything. On the first contact, before you even realize what you've lost, and what kind of damages you've sustained.

Now, again, if I'm doing my duty, and I am settling as many as I can on a first contact basis, which is appropriate in some circumstances, and I'm doing the best I can, but then someone imposes upon me [151] to increase that number by 10 percent, how do I do it if I'm already settling all that I should be settling on a first contact basis? I do it by non-disclosure, I do it by not telling them something, or deceiving them, or by cheating them in some way, or taking advantage of them, and forcing them to settle on that first contact.

There are other ways. There are actual instructions in the PP&Rs to control the claimant to avoid attorney representation, to ensure that attorneys aren't involved. And you'll see why, because attorneys usually know what the claimant is entitled to. And they stick up for the claimant and say, "No, medical expenses are not enough. And what

about future medical expenses? And what about lost earnings? And what about this and what about that?" So they know that if they can keep attorneys out of it they can settle it for less. And that is a big item, you'll see it all over in the PP&Rs, is control the claimant, and avoid legal representation.

You'll hear other contests, and other kinds of incentive programs. You'll hear from Bruce Davis, for example, from Colorado, an ex-State Farm employee. He states that they had in his area what are called claims savings reports. They determined beforehand how much is owing on these claims, and the contest is, "How much can you save off of what is owing?" And everyone [152] plays it. And then everyone adds it up. And whoever can save the most off of what is owing receives a prize, or is recognized in some kind of a program after.

There are other incentive programs that you'll hear about. In California, for example, where there was a contest, there's kind of a rule of thumb that if someone's been injured, they're entitled to three times their medical expenses for pain and suffering. It's not a hard and fast rule, but it's kind of a rule. And they would have contests to determine who could save the most off of that by settling claims for less than that.

Now, another area you're going to hear about regarding the cheating that's going on are actual witnesses, past State Farm employees. Some of these employees are honest people, some of them never engaged in this kind of activity. Others did, and are ashamed, and have stepped forward and talked about it.

You're going to hear from Ray Summers, you've already heard about him. He had one of the lowest average paid claims in the country. Now, what Mr. Christensen didn't tell you about when he told you that he gave testimony of over 150 files where he had cheated people and was involved in phoneying up papers and documents, what he didn't tell you

about is that we [153] took the deposition of his secretary, Marilyn Paulsen, and we said, "Didn't you know this was going on?"

She said, "Oh, yeah, I knew it was going on all through the seventies. The latter sixties.

"Didn't it make you feel awkward about it?

"Oh, I felt terrible about it.

"Did you do anything about it?

"Yes, I did.

"What did you do?

"I called the superintendent, Wayne Ballantyne. I said, 'This is what's going on here.'"

Do you know what his response was? "Mind your own business, Ms. Paulsen. That's good claims."

Now, State Farm's going to suggest to you that Mr. Summers is a liar. He has engaged in lying. There is no doubt about it. But he now is admitting it. He admits how many people, and he'll tell you the names of the people that the files, he'll talk about a number of other things.

But what is particularly interesting is the testimony of Felix Jensen. He still works for State Farm. He's been with them, I think thirty years, he's about to retire.

When I took his deposition he says, "Yeah, I remember Ray Summers.

[154] "Why do you remember him?

"Because in a state-wide adjuster's meeting, where we had all the adjusters come in a meeting for training to help each other understand what was going on and how to do their job better, he spoke. Mr. Summers spoke, Ray Summers did.

"What did he talk about?

"He talked about how he cheated people. He talked about how he phoneyed up memos, how he manipulated the claimants, and how he did a number of improper things and dishonest things."

And I asked Mr. Jensen, "Well, do you do that?"

He said, "No, I don't do that, I would never do that."

I said, "Well, what kind of meeting was it?

"Well, it was interchange. We were all sharing ideas of what was going on."

And I said, "Well, what was the reaction of the other adjusters?"

He said, "Over half said they did the same thing." He's still employed by State Farm.

You're going to hear from Ina DeLong, a past State Farm employee in California. She's quite a notorious person in terms of the public. When she left [155] State Farm she had felt so rotten what she had done to people, and what she was forced to do, that she went public. She even was on "60 Minutes" and described the kinds of things that she had been involved in with State Farm in cheating people.

She will talk about a number of things, about how these techniques are used to cheat people, and to take advantage of people. These witnesses, along with others, will give you a picture of where they try and take advantage of people.

First, they look for older people that, they are more vulnerable, they're easier to manipulate, and they're easier to get a quick settlement for less than fair value.

They look for minorities, who don't understand, or are less educated, or may not speak the English language very well. They look for the less educated, because they may not understand their rights, and therefore they're easier targets. They look for those who are financially strapped, because they're more willing to compromise, because they have no choice, they're under financial duress. They have to take less because of immediate needs.

They look for the personalities that are not the kind that are willing to fight, that are quiet, that [156] are inward, because they know they can force settlements, improper settlements from them.

Now, you're going to hear one of the biggest slogans at State Farm, which is, "State Farm pays what is owed, not a penny more, not a penny less." That's their slogan, it's written all over. And that, and every one of their employees will say that. But everyone that I've asked, and you'll hear it, I say, "Well, who is it that determines what's fair?

"We do.

"Well now, hold it. If you only pay what is fair, not a penny more, not a penny less, how is that fair if you're the one that's determining?

"Well, we negotiate.

"Well, you mean you start low and you go up?

"Yeah."

In fact, you'll hear many that will say that we've been given authority to offer $20,000, but don't offer twenty, offer fifteen, and don't go up, and see what happens.

And I say, "How is that offering fair value, not a penny more, not a penny less?

"Oh, because fair value is a range.

"What do you mean, a range?

"Well, it's anything from here to here. And [157] so as long as we're offering somewhere in between here and here, it's fair value."

Well, you can see, and you will see how that's a meaningless slogan which is nothing more than self-serving.

You'll also see they don't offer top dollar, often until after they force the claimant into litigation, and then they won't offer top dollar, meaning the fair value, until just before trial.

Then they will say, "But we win most of our cases.

"What do you mean, 'win'?

"Well, the jury often comes back for less than what we offer.

"Well, when do you make the offer?

"Well, just before trial.

"What did you offer before?

"Well, I don't know."

I'll touch on this more in a minute, but that, you can see how this is played in terms of how they will present their case, and the evidence you'll hear.

Let me get into the second area very quickly. Concealment after the cheating and the deceit has gone on. Now you're getting into an area where State Farm [158] begins to conceal what they've done. This is really important, because it goes to what evidence can be presented to a jury like you.

They start at the very beginning with a claim file. They build their claim file. They cleanse it. They sanitize it. They write self-serving memos and letters to each other, and to their attorney. You've heard some of that this morning. They do an outcome oriented investigation. Their duty is to go out and investigate and determine what's fair.

What they do is, they do an outcome oriented. "We're going to determine that we're not going to pay any more than this, or we're not going to pay at all. Now, investigate to prove it." And that's what happened in this case, as well as many others.

Then finally, they end up destroying and deleting documents. Now, this isn't restricted to just claim files. It is company-wide destruction of documents. Believe it or not, you're going to see a memorandum from a prior divisional claims superintendent, her name is Samantha Bird, here in Salt Lake City. She's since left the employment of State Farm. She did not feel right there, she thought she was asked to do things that were inappropriate. She is one of the honest people that worked at State Farm.

[159] She will talk about how, just after this case was filed in 1989, within a few months, spring of 1990, an in-house attorney by the name of Janet Cammack came over

here and met with all of the superintendents in Utah, and told them to destroy all of their manuals, their old manuals, their claim notes, their training material, everything that wasn't currently in use. A wholesale destruction. You're going to hear how, in their manuals, they have sections on destroying their old material, because it is easier not to have them than to defend them in court.

You'll see in the minutes, in the notes of meetings, where, because of bad faith actions they want to get rid of documents because it incriminates them. But enough documents have survived the purge, and you're going to see them, you're going to see where employees are required to certify with a signature that they have destroyed everything that they've been directed to destroy. It's a certification of destruction, right at the top and they have to sign it as destroying the documents.

Now, what's particularly interesting is, at home office State Farm has what they call an archive department. When we found out, we took the deposition of the head archivist. Usually archives are to keep a [160] record of what's gone on. At least one copy, you know, one copy, a big company you keep one copy of the old manuals and so forth.

We took his deposition and we got an index of all of the documents and things that he had in his archive department. Do you realize there wasn't one manual? Instead, there were bumper stickers, there were ashtrays, in fact there was even a band aid box in poor condition. What that is I have no idea. It must have "State Farm" written on it, I don't know.

But here a professional archivist is doing nothing but saving memorabilia, and is not saving any of the critical important documents that show what was going on inside those corporate doors.

You're going to see how they have one of the most sophisticated electronic systems in the world, probably.

Incredible computer capacity. They keep track of almost everything except a couple of areas. When asked, "How many bad faith claims are there against State Farm?

"We don't know, we don't keep track of them.

"How many punitive damage cases have there been against State Farm?

"We don't know, we don't keep track of them. Well, but we keep track of these cases where we win. We [161] keep track of these cases that show how good we are.

"Well, how many are there?

"We don't know. We just don't keep track of it."

You'll hear how they have the ability to know what's going on, and how bad their practices are, but they choose not to account for it, so that they don't have to answer to a jury like you on how bad and how widespread their bad practices are.

All right, another way they conceal is through secret settlements. When there is a settlement with a claimant such as the Campbells in this case, there isn't one with State Farm, but I'm saying in a situation like this, they typically require a secret settlement, a confidentiality agreement. They require all of the documents to be returned back to State Farm, and they require, even the attorneys, the clients, the witnesses, the expert witnesses, not to talk about anything, total silence. That's how they continue to conceal what's been going on.

You're going to hear from two important people, they're called experts. The law recognizes people for expertise in a certain area, either because of education, or because of experience or training.

And Mr. Stephen Prater is an adjunct law [162] professor from Santa Clara near San Jose. He has specialized in insurance work, he's been general counsel for a group of insurance companies and other companies. He specializes in the area of insurance law. You'll hear from him. You'll hear

from Gary Fye, an adjuster for all of his life, twenty, thirty years of adjusting, he's adjusted and worked for over 100 companies, insurance companies.

Over the years these two experts have gathered documents from past State Farm employees, or from courts that would force the production of documents. You'll hear about the Singh case in California. Singh was a claimant that was cheated and brought a bad faith claim against State Farm.

The judge in L.A. forced State Farm, over a two-month period, to divulge documents. Literally scores, if not hundreds of boxes of documents were finally turned over, with contempt orders issued in order to get the documents. Finally they were provided, they're called the Singh documents. Whenever you hear that word, "Singh," that refers to a case in California.

That's where a number of these documents you're going to see have been preserved and surfaced. Ina DeLong, remember her, she now heads up what is called the United Policy Holders, which is a consumer [163] group across the country. She has obtained a large quantity of those documents.

Let me go to the third point. State Farm uses the legal system to take unfair advantage of claimants and insureds. Let me give you an idea of what you'll hear regarding this point. First of all, State Farm uses what are called predictable experts. Experts which you know what their testimony will be, even without having them read the file. Or experts which they can develop and manipulate to say what they want the experts to say.

A good example of that is this case in Campbell. Dahle was first saying, when he was independent, when he was looking at it fairly, that Mr. Campbell was at fault. By the time of trial, and by the time State Farm hired him, and over a period of a year and a half, he was finally able to determine that Mr. Campbell wasn't at fault, and it was only Mr. Ospital.

A perfect example of how they use predictable experts and develop experts.

Second, they use a hard ball stance, where they fight very vigorously, they fight everything. A very hard-ball, non-negotiable kind of approach.

In that 1986 training conference which I referred to earlier, you're going to see transcripts, [164] and actually part of the video from it. You're going to hear how they are taught that truth is illusory. What that means is, truth is whatever you can make it appear to be. They are taught that. That was a subject of an entire lecture series, is how to present and sell a case in behalf, or to support State Farm's position. And you'll hear the word "illusory," which means it's whatever we can make it to be.

You're going to hear how State Farm claims to win 80, or 98 percent of the time. Better than Perry Mason. Ninety-eight percent of the time they claim to win the cases that they try. When we ask them, "Well, how can that be? No one has that kind of record."

"Well, we define what 'win' means."

"Well, what does 'win' mean?"

"Well, it means that the jury ultimately awarded iess than what we finally offered, or that we could overturn it on appeal, or that we could somehow get settlement for less than what we finally offered," or something to that effect.

They've hired a Mr. Tolley, a very fine man from BYU, a statistician, and they've given him all these numbers throughout the country of cases that they've won and said, "Add them up." So he added them up, and 98 percent, or 93 percent, or whatever it is, in [165] the high nineties. And he says, "Boy, that's impressive."

We asked him, "Well, did you verify this?"

"No."

"Did you ever look at the files to see if it's true?"

"No."

"Well, what are you relying on?"

"Well, what they gave me."

"And so you're saying that they win ninety-plus percent of all of their trials?"

"Yeah."

"And you have no basis for it."

"No."

Well, when he was asked, "Well, how do you analyze what is legitimate evidence or not?"

He said, "Well, you have to look at the results. If the results seem a little out of whack, then maybe your data isn't quite up to speed." That's a very telling comment.

Then Mr. Tolley will also say that, "I have no record of bad faith claims, I have no record of first-party claims." First-party claims are where the insured himself sues State Farm, such as in this case. There's no win-loss records on those. They don't keep [166] track of those, again. It's only on what are called third-party claims that they keep track of them and have this kind of a win-loss ratio, so they claim.

Now, you're going to see the Excess Liability Handbook. Roger Christensen has referred to that. You will see how profitable it is. Remember the "why" question? "Why would they do this? Why would they hire Bennett? Why would they fight?"

You'll see, over the millions of claims a year throughout the country, how only very few are willing to fight and go all the way through this ordeal to get their claim heard. And the ninety-plus percent that just can't stomach it, that can't take it, that settle for less than fair value, they have no record of, and there's no way that -- And they don't keep track of that, except in the early years, on how profitable it is.

So for every Campbell there is out there, there are probably hundreds of Campbells that just don't pursue the claim. That's why. That's how profitable it is.

You're going to see how State Farm, back in 1980, had what are called surplus funds. These are assets, or money that are surplus, they're extra, of a few billion dollars. Last year their financial [167] statement showed excess, or surplus funds of nearly $26 billion. You'll see how that has raised at the rate of millions of dollars a week, on the average, since 1980.

You will also see how -- Let me back up. State Farm will present evidence that, "We need this kind of surplus in case there's a disaster, in case there's a big event that we need to pay claims."

Bruce Callis, I believe, and Mr. Lehman, one of the executive vice presidents, two of the executive vice presidents of State Farm, testified that in the early nineties, the most unprecedented losses occurred. The hurricane in Florida, the flooding, the earthquakes in California. It was unprecedented, unparalleled, as they say, losses. Do you realize that, after paying all of those, State Farm's surplus only went down one to two billion dollars and has continued to go up ever since? That's why, that's how profitable this is.

On the small scale it is not much. A few dollars here, $15 there, $25,000 here and there. But when you multiply that over 15 million claims a year, you begin to realize how profitable that could be.

The reason why that becomes important is because State Farm, being the largest insurer in the country, begins to have a competitive edge over other insurance companies, because of these techniques. And [168] as a result they have competitive rates for the most part.

And what happens is, it forces other companies to pay less on their claims, or they can't compete. And so they are forced, likewise, to follow the leader and pay less than fair value because of the consequences that they suffer in the marketplace. State Farm becomes a total monopoly because

they are able to cut their rates to a point where they can force other companies to either do the same, or suffer substantial financial loss.

All right, a final couple of little points. Let me just run down one thing. The judgments that were entered against the Campbells are less than the total verdict, and the reason why is because the judgment for Slusher was reduced by the $65,000 settlement that Allstate paid. That's just so you understand that.

Second, you're going to hear some of the responses from State Farm. State Farm's going to say, "Well, the Campbells continued to keep their State Farm insurance, and therefore they must not have believed that State Farm was all that bad."

Well, they canceled the State Farm insurance a few months ago, or excuse me, a few years ago. Especially after they found out what we had discovered [169] during the course of this case regarding how widespread, that their case was not an isolated case.

They will tell you about a close friend, Mr. Jeppson, a very good friend, a very good person who sells their insurance up in the rural area. They buy insurance because of their friend. They don't buy insurance because of State Farm. And that it was very troublesome to them to have to tell their friend that they had to cancel that insurance.

Another thing State Farm will claim, or try and do, is to attack the Campbells, attack the Ospitals, attack Slushers, that they're greedy, that most of the recovery's going to Ospitals and Slusher, they'll attack me, they'll attack everyone in order to avoid responsibility. You'll see that throughout the course of this trial. And they will claim that it's an innocent mistake. But you'll see how the Campbell file just fits right into this pattern and practice that they're doing all over the country.

They'll tell you about insurance commissioners. They'll call Mr. Yancey, they'll call some others throughout the country. These insurance commissioners are charged with the responsibility of regulating insurance companies, and they say State Farm's fine. They don't have very many complaints.

[170] Well, if you add up all their verified complaints, it amounts to tens of thousands of complaints against State Farm that are verified. But you'll hear that insurance commissioners are understaffed, there are only two in Utah that govern thousands of insurance companies, medical, life insurance, casualty, property, commercial, all kinds.

You'll hear that they don't do the kinds of investigations to find out if there's really this kind of thing going on. They don't read the manuals, they don't go to their training sessions.

Most people, like the Campbells, don't even know there is an insurance commission that exists that might be able to do something. The insurance commissioners have no knowledge of lawsuits, they keep no track of the bad faith claims against State Farm. They just have a total lack of information. You'll hear all about that through the experts.

All right. Now, I know that this is going to take a good part of your summer, but this is a very important case. As you can see, now that I've described it to you, it transcends the Campbell file. It involves a nationwide practice. And you, here, are going to be evaluating and assessing, and hopefully requiring State Farm to stand accountable for what it's doing across the [171] country, which is the purpose of punitive damages.

We appreciate your attention very much. This is not only what's happening throughout the country, but it's what's happening here in Utah, to our friends, our neighbors, the community, the state. And you'll hear evidence about all of that that's going on.

The importance of this case cannot be overemphasized because of its impact on the insurance industry as a whole, and its impact on State Farm, the largest insurer in this country. And I appreciate your attention, and look forward to spending the next few weeks with you. Thank you.

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EXCERPTS OF TRANSCRIPT OF DEFENDANT'S OPENING STATEMENTS: PAUL M. BELNAP, ESQ., JUNE 6, 1996

[Vol. 3, R. 10258, commencing at p. 172]

* * *

THE COURT: We're back on the record. The record should note the jury has returned to the courtroom, and counsel and the parties are present. You may proceed.

MR. BELNAP: Good afternoon, my name is Paul Belnap, I'm pleased -- Can you hear me? Can you hear me now? Okay. The acoustics in these courtrooms, when you stand here it sounds like an echo. And evidently, even though you're a few feet away, so if you have a hard time hearing at any time during the trial, please let us know.

I'm nervous, but I'm glad to be here. My client, while not looking forward to being in a lawsuit, is looking forward to having this matter concluded and put behind them, along with everyone else. As has been [173] stated, we realize this is a tremendous burden on each of you to serve this jury service, but we thank you and appreciate that, and I would like to move forward.

Mr. Campbell was found to be at fault in the 1981 accident that caused the death of Todd Ospital and the injuries to Robert Slusher. Campbell had only purchased $25,000 of insurance for each individual claim. The 1983 jury that you've heard about awarded $253,000, which resulted in a judgment against Campbell for $184,835, because Slusher had already received $65,000 from the insurance company of Ospital, and each had received some benefits from their own insurance company, which, under Utah law, reduced the jury award down to the $184,000 figure.

State Farm has paid the entire judgments, with accrued interest and costs totalling $314,287. Why would State Farm pay more than the $25,000 for each person, when you've heard the things that you've heard from this podium, from the plaintiffs?

I would like to answer that question for you. Mr. Campbell insisted that he was not at fault. Before we ever talked to him about the accident, he gave a statement to another person, and absolutely insisted that he was not the cause of the accident.

We believed him. There was other evidence to [174] support that, that we believed. We paid for a lawyer and for his defense. When we made that decision, if we were wrong in doing so, and in relying and in believing in Mr. Campbell, then we meet the consequences of that decision, and have paid for it, with interest and costs, for each of the judgments in full.

After the 1983 judgment, Mr. Campbell continued to feel, and does to this day, that he was not at fault, and that this would be shown if he could simply have a new trial, or successfully appeal.

Following the direction of his attorneys, State Farm felt that there was a good faith basis to appeal, and an appeal was taken. The appeal was not successful, and at the end of it, the judgments in full were paid, with interest at 12 percent, and costs, totaling $314,287.

In addition to paying the judgments, Mr. Campbell received a full and complete satisfaction of the judgments that had been entered, and those were filed with the court and totally released, and completed all of that.

The question that I would ask, as we talk about why we're here, and you've heard discussions about that from the plaintiff's presentation, is that after defending Mr. Campbell, after appealing for him as he [175] directed, this lawsuit was brought against State Farm claiming that they should have paid sooner.

The plaintiff's evidence in this case will be that State Farm should have disregarded what Mr. Campbell had told them about the accident, what he consistently stated, and the other evidence, and that they should have settled the claims, despite what he felt and continues to feel about this accident.

The November, 1995 jury said this case should have been settled, and that State Farm should have disregarded Mr. Campbell's version. Our evidence will show, and it's undisputed, that at the time of that jury decision State Farm paid the entire judgments some six years before that, and we accept that finding made by the jury, because of the obligation of his insurance company that relied on his version of the accident.

This lawsuit that we're here today on was then filed, after paying those judgments in full, to get more money.

The 1995 jury decision -- Excuse me. I'd like to walk back with you, as I make this opening statement, and share with you the decision-making process that took place, the people that were involved in that decision-making process, to talk about what they knew, what they decided, and how they decided it, and [176] the basis for that decision.

While the payment has been made, while the judgment was entered that's been talked about, we firmly believe that, as you listen to the evidence in this case, that you will believe, at the conclusion of the case, that the decisions that were made to try that case in 1983, while the jury said Mr. Campbell was at fault, they were not made in a malicious manner, they were not made in a reckless manner, they were not made intentionally to injure Mr. Campbell, whose position we took, who we believed and supported, as I've indicated to you.

I'd like to talk to you about what a judgment is. In this case, the trial took place in September of 1983. That's when the jury came back with their decision that you've heard about. The judgment is something that the court prepares in a written

document, as you can see, that I'm showing you, and is signed and entered. For instance, the judgment of Mr. Slusher was signed and entered the end of November.

Now, when this is entered, it does become a lien on the property of Mr. Campbell. However, by that time, there are many things that you have not been told about that I'd like to share with you, and I want to be judicious in the use of the time, since we're going to [177] be here together for a while in the next weeks.

But I want, as best you can, for you to understand a road map of the things that we think the facts will set forth. And one of those things that has not been talked about is what State Farm was told to do by the attorneys that Mr. Campbell consulted with after the judgment.

I'd like to refer to the first page, if I can stand here, and then you'll be able to see it. "That Mr. Campbell considers it the duty of State Farm Insurance Company to take all steps which can be taken to set aside the judgment, to have the matter retried if there are facts and basis upon which to do so, and it further remains the responsibility to pursue any avenues of appeal which may reasonably be made under the circumstances."

This is a letter that was written right after Mr. Campbell had sat through the trial, had heard all the evidence which plaintiffs' counsel now claims had been concealed from him, and had heard it all, and indicated that he wanted a new trial, and that he clearly wanted an appeal, and directed State Farm to do so.

Then, what is significant, is after doing what was directed, and further, over on the second page, [178] "If, for any reason, State Farm fails to fully follow through on this matter to its conclusion, and if an ultimate decision is adverse, to pay the same in full, we would look to State Farm Insurance Company, not only for payment in full of the judgment, but for substantial punitive damages."

Now, what is clearly being said there in the bold print is, "State Farm, we want you to see this through to a conclusion, and if that is not favorable on the appeal, then we want you to pay in full. And if you don't do that, then there will be consequences." And State Farm followed to the letter, with interest and costs, in paying that full judgments that had been entered. And after doing so, was then sued for more money.

After the judgments were entered, verbal discussions immediately started in the place where the discussions were, "Let's get together, let's go after State Farm, let's get some money out of State Farm, and we will not go after you, Mr. and Mrs. Campbell, if you will enter into that agreement.

There was a lot of discussion about the fact that there was upset and distress. But in December -- remember that the judgment was entered the end of November, the judgment, one of them was entered the [179] middle part and the Slusher judgment the end of November -- in December of 1983, a letter was written indicating, "But nevertheless, we would not commence any collection action against Mr. Campbell personally until we have had the opportunity to review the possible assignment of his cause of action against State Farm to ourselves and to Mr. Humpherys on behalf of Ospitals."

That letter was followed up with, after meeting between these people, with another indication of what their intentions were. There's been discussion about the fact that there was no bond that was filed. However, if I can read with you, "Although no bond has been filed, we have more or less decided that since the judgments bear interest at 12 percent, we will not pursue any garnishment against the State Farm policy for the limits pending the appeal." They talk about the fact that there will not be efforts made to go against Mr. Campbell.

Both of these letters, along with other letters, were sent to Mr. Campbell by his attorneys, Hoggan and Jensen, indicating that there were verbal agreements entered into, "That no one will be coming after your property while we are in these discussions."

Shortly after the March 13th, 1984 letter, a draft of an agreement was put together and was [180] circulated in the first part of May to accomplish an agreement to come after State Farm and to insulate Mr. Campbell. That agreement basically sat in place and nobody did anything about it, there was very little change to that agreement, and finally Mr. Campbell's attorneys, Hoggan and Jensen put it together again and sent it back out to Mr. Humpherys in September saying, "Let's get this signed, let's get if done."

It came back, and ultimately Mr. Campbell, in a finalized form, signed it in November, and everyone else signed it in December. And I'd like to share that agreement with you in a few minutes and talk about it.

With respect to the damage claims that have been made in this case, it is undisputed that there was never any attempt to go after Mr. Campbell on these judgments. There was never a sale of any of his assets. The verbal agreements, the letter agreements, the written agreements that we'll be talking about confirmed that there was not going to be attempts to go after him.

There's been discussion about his health, and about that of his wife. And I'd like to talk about that for just a minute. The Campbells served a mission for their church in 1982. In 1986 they decided they wanted to serve another mission, while this case was on appeal. In order to qualify for that, they have to go through a [181] fairly extensive medical and psychological review with their physician.

You will see evidence in this case that Mr. Campbell and Mrs. Campbell went in for a health evaluation with their doctor, that had some eighty-seven questions on it, including a complete physical examination. These questions are both physical and mental, asking questions of Mr. and Mrs. Campbell, such as, "Have you had any problems with headaches?"

"No."

"Are you having any treatment or problems for emotional or mental illness?"

"No."

"Do you have difficulty getting along with others?"

"No."

"Are you having any overwhelming stresses or tensions at home?"

"No."

"Have you had any thoughts about suicide?"

"No."

"Do you have any mental illness or emotional problems?"

"No."

The doctor signed, on behalf of both of the [182] Campbells, certifying that they were fit, physically and emotionally, to serve a mission, and they did so.

I'm glad that we hear, now, which has not been always the case, that it's acknowledged that we did not cause Mr. Campbell's Parkinson's disease. You will hear from one of the leading experts here in the state of Utah, Dr. Roberts, who will tell you that Parkinson's disease is not caused by stress, and would not have been caused by this.

He will state that, at a short period of time, if there's acute stress, that the symptoms may become worse, but then they will return to base line after the acute stress, and will indicate to you that this was not caused, and has not been made worse in any respect by this accident.

With respect to money that Campbells have been out of pocket in this case, the evidence will be undisputed that the only money that the Campbells have incurred because of the conduct of State Farm is a legal bill to Hoggan and Jensen of $800, approximately, before the judgments were paid. The remainder of the money that has been spent in this case has been incurred after the 1989 lawsuit was filed, after the judgments were paid.

The court will instruct you at the end of [183] this case that from December, 1984 -- so that's a window of approximately a year from the time the judgments were entered in late November of '83 to December of '84 -- is the time period with which you will be examining the emotional distress and damages of the Campbells, because in December of '84, they entered into an agreement, which I'll talk to you about in a few minutes, that absolutely insulated them from any personal liability, made it so their property was not tied up in any respect in terms of their ability to buy or sell property, and that it was not affecting their credit in any way whatsoever during that time period, once the agreement took place.

Now, as attorneys we are charged with the responsibility, and I take this seriously, and as does Mr. Hanni and Mr. Schultz and Mr. Crandall, to zealously represent our client, and I intend to do that, and hope that in this case we conduct ourselves appropriately and in a manner that does not offend you.

But I stand here today, zealously feeling about the issues in this case, and what I have heard alleged against State Farm. State Farm is a company made up of individuals. And they are good people. We believe the evidence will show that the individuals are good people, and if it's the evil company that has been [184] portrayed, it just does not wash with the good people that they have, and they continue to have.

But you may choose, at this point, to be skeptical, and you are the judges in this case. Judge Bohling at the end of the case will instruct you in what the law is, and you will then go into the jury room and put on a hat of being the judges in this case. Being the ones that have to be impartial.

And in that regard, why would the plaintiffs stand up and make so many inflammatory statements at the start of the case, if they were not intending to try and take you out of the role of judges, impartiality, people that should fairly weigh the scales of justice, to come to a reasonable decision at the end of the case?

MR. CHRISTENSEN: Your Honor, I'm going to object to this. This isn't proper for opening statement. It's argumentative, and it's misrepresenting, as well.

MR. BELNAP: Your Honor, I did not raise a single objection during the plaintiff's opening statement, and there was -- Excuse me, Your Honor, I don't think that's appropriate.

THE COURT: I don't know where the laughter came from, but I instruct the audience to express no emotion. Proceed with your statement to the court.

[185] MR. BELNAP: I was just going to state, I made no objections during opening statement, many of which were in the form of argument as well, Your Honor. And I don't believe that was argument, but I'd like to proceed.

MR. CHRISTENSEN: My concern, Your Honor, this goes beyond arguing the facts, this now goes to accusing counsel.

MR. BELNAP: I did not intend that. If that's how it sounded I apologize, Mr. Christensen, Mr. Humpherys.

THE COURT: Proceed with your statement and confine it to the facts of the case, not to counsel.

MR. BELNAP: You will hear testimony in this case, from people other than State Farm witnesses, who have had substantial experience with State Farm, and who have a reason to know if there's a pattern and a practice of cheating, deceiving, and taking away things that people are entitled to.

In this case you'll hear from regulators. Each state in the United States, which State Farm does business in, has an insurance department that is mandated by statute to do two things. Number one, the statute requires that they make sure that the insurance companies are financially solvent and viable so that [186] they can meet the obligations of paying the claims that come to them.

Second obligation is that they are meeting the claims, the claims process, and paying claims to the public, that is the obligation.

In the state of Utah, these are some statistics that you will hear from one of the regulators here in Utah, Mr. Ovard, who are kept by the state of Utah. And as people call in and lodge complaints against insurance companies, they're investigated and they make a determination as to whether or not they're valid.

Now, yes, State Farm in this time period, which was 1994-1995, had twenty-one complaints that were deemed to be valid. But if you look at the ratio of the amount of insurance that is sold, on a percentage basis, with the complaints, and you compare this ratio with the amount of premium that's written, this is where State Farm ranks with the other top companies that sell insurance in the state of Utah in terms of complaints.

And these people, Mr. Ovard, other regulators, will tell you that they do not believe that there's a pattern and a practice of cheating people. That if there was such, they would know about it, and they would have been able to determine it, that it's [187] happening as alleged by the plaintiffs.

You'll hear from Mr. Yancey, who was an insurance commissioner here in the state for a number of years. You'll hear from commissioners in the home state of State Farm,

Illinois, you'll hear from former commissioners in Texas, Nebraska. You'll also hear discussion about the fact that each state has a commissioner, and they attend nationwide meetings made up of the national association of insurance commissioners. And if there is a nationwide problem with any insurance companies, those are discussed and made known at these nationwide and national meetings.

You'll hear testimony that State Farm ranks on a good basis in Consumer Reports, for instance. That their complaint ratio is low, from talking to people themselves that have been through the claims process.

When you hear the evidence of the plaintiffs, I would simply ask, as the judge has told you at the start of the case, the defense goes second. The plaintiffs have the burden of proof in this case, the burden of proving everything that they've said, and so they go first. That's why their opening statement was first, that's why their testimony will be first.

I would ask that you reserve any judgment or opinions until you've heard all of the evidence, and we [188] believe, when you have heard all of the evidence, you will ask yourself, the time that we have spent this summer talking about all of these other things, how are they related to the Campbell case? In the Campbell case, Campbell told us, "I'm not at fault." We believed him.

Based upon the opinion of Mr. Bennett, a seasoned trial attorney, along with the investigation, a decision was made to try the case, an offer was not made. Mr. Campbell did not feel he was at fault, and State Farm believed that.

There wasn't a situation of low balling, like has been talked about, or not settling for enough money, or simply paying medical expenses and nothing more, or doing these other things that they've talked that Mr. Davis will tell you about, about property damage settlements that other people will talk about in terms of other issues. That had nothing to do with the Campbell case from these former people and experts that we'll talk to you about.

I'd like to talk to you about the makeup of the underlying case, just so it'll be clear as I proceed ahead with my statement. In 1981, when the lawsuit was filed, Mr. Slusher was the plaintiff. He was represented by Mr. Barrett, Scott Barrett, who you saw [189] his name on some of the pleadings.

The lawsuit was against the estate of Ospital and against Mr. Campbell, alleging that they were both at fault. Mr. Humpherys was hired by Allstate and Farmer's insurance to defend Ospital, Mr. Bennett was hired to defend Campbell. That's how the case proceeded until about 1982 and into 1983. In 1983, as Mr. Humpherys has told you, a settlement took place between Slusher and Ospital, indicating that there was no longer a claim between them when the case went to trial.

When the case proceeded to trial, the claim was against Mr. Campbell, who, by this time, Ospitals had sued for the death of their son.

At the present time, the makeup of the case is that Mr. Campbell and Mrs. Campbell are the plaintiffs, suing State Farm, alleging that they breached the contract of insurance in dealing with them.

You'll hear some concepts in this case that I want to briefly explain to you. And you may already understand this, and bear with me if you do. But during the course of this case, you'll hear testimony from some of the witnesses about first-party claims and third-party claims. And I'd like to just briefly explain that, so when you hear those terms you'll [190] understand and see what the relationship is, and the relevance or not that it has to the facts of this case.

In a first-party claim, the insured, such as yourselves, that have an insurance policy, make the claim against your own insurance company for things like property damage to your car,

or medical expenses if you're in a car accident and need those paid, or uninsured motorist benefits if you're hit by somebody that does not have coverage. That's a first-party claim. Meaning you, as a first party, are making claim against your insurance company.

A third-party claim is what we have in the Campbell case. That is a situation where an individual is making a claim against the insured. In this case, Mr. Campbell, the individuals would be Slusher and Ospital, making a claim against Mr. Campbell for bodily injury, property damage, or medical payments. That's the difference between a first and a third-party claim, as you hear those terms discussed in this case.

Having talked about that, I want to share some statistics with you about third-party claims that State Farm has experienced.

Between the time period 1980 through 1994, nationwide State Farm has handled over 6 million third-party bodily injury claims. Those are known as [191] BI, the initials BI. And in Utah in the same time period they've handled 29,497. The vast majority of those cases are settled without ever going to a lawsuit. Over 5 million of them nationwide during that time period were settled without there ever being a lawsuit filed, same high percentage in Utah. This is the number of lawsuits, these are the number of cases that were tried nationwide during that time period, Utah during that time period, and the numbers won.

Now, what that has to say, I'd like to talk to you about. In the process of handling a bodily injury claim, these claims are resolved when a person who has a claim makes a dollar demand on someone, either the insured or directly with the insurance company. In respond to this, State Farm investigates, and typically as born out by the statistics, makes an offer, and the cases are usually settled. Somewhere between these figures.

Now, if I heard the statement of plaintiff's counsel correctly, it was claimed that it's inappropriate not to pay exactly what is demanded, here. And maybe I didn't hear that right. But their own experts will say that it is entirely appropriate for an insurance company, when they receive a demand, to be able to negotiate with the person that is asking for the [192] money. And this is where cases, 85 to 90 percent of cases are settled in this process.

If a case cannot be settled, then some of them do go to lawsuit, a small percentage, as you can see by those statistics. And of the cases that go to lawsuit, most of those are settled without trial. And when they are tried, in 90 percent of the cases that are tried, the jury awards less money than State Farm's last offer.

We believe, along with the other evidence that you will see in this case, and hear, that if there was a pattern and practice of being reckless, of being willful, and in disregard to the rights of insureds, that we would be seeing what's alleged by the plaintiffs in this case on a frequent basis, where it just simply is not happening.

The fact of the matter is, that nationwide and in Utah, less than 2 percent of cases actually go to trial, over 98 percent of cases are either settled or dismissed by the courts without having to go to trial. State Farm is not reckless, State Farm is not willfully in disregard of its insureds throughout the country, as has been claimed.

In the state of Utah, in the time period 1980 through 1994, there were 29,000 bodily injury claims [193] handled. Of those 29,000, 26,498 were settled without a lawsuit. 3,000 resulted in a lawsuit, and most of those were resolved without trial on the same statistics that we have talked about.

In that time period, there were seven cases that resulted in an excess verdict, meaning a verdict for more than the insurance policy of the insured, giving a statistic that that occurs two out of every 10,000 bodily injury claims. State Farm is not willful, State Farm is not reckless in dealing with its insureds.

In each of these cases, State Farm made the decision, based upon the investigation, that the case would be tried. State Farm met the consequences that went with that decision, and has paid and resolved each of those cases. State Farm is not willful and reckless in dealing with its insureds.

Mr. Humpherys has shared with you a chart of the people that are involved that you'll be hearing about. You'll hear the terms in this case of claims adjuster, claims superintendent, divisional claims superintendent, and then the mountain states regional vice president.

At the time of this case, the handling of it, Ray Summers was the first claims adjuster on the case. Bob Noxon was the claims superintendent, and then Jerry [194] Stevenson took his job, and was in this position when the case was tried. William Brown was the divisional claims superintendent. At the present time Paul Short, Craig Kingman, and Buck Muskowski are the people in those positions.

State Farm has approximately 65,000 employees and over 1,500 claims offices across the country. Because of the size, a decision has been made to divide the company into regions, and we are part of the mountain states region that's been talked about.

Mr. Muskowski and these other people will tell you that within this region it's semi-autonomous in terms of the handling of claims and the monitoring of claims practices. And they will talk to you about the fact that people receive training, that people are trained to handle claims properly, and that their experience is that claims are being handled properly.

You will hear even the plaintiffs' witnesses, you heard talk about Samantha Bird. She was formerly a claims superintendent. She will tell you, "I was trained to deal fairly with people in my training that I took from State Farm, and I did so."

Even Mr. Summers will tell you that in his training, he was trained by the company to be fair, despite what he was doing. When you hear from people [195] like Mr. Summers, Mr. Davis, and other former dissatisfied employees, such as Mr. Crowe, who you may be hearing from tomorrow, who, by his own testimony will tell you that he was not honest when he was with State Farm in a supervisory position, that when he was in a supervisory position a garnishment came into the company, and he hid that from the company, it was against him, and he hid it, and had other problems with the company. And he'll tell you about that, and indicate that that's behind him.

But the fact of the matter is, the people that you will hear from have an ax to grind against State Farm. There are professional witnesses who make a substantial portion of their living testifying against State Farm in cases just like this. As much as 70 percent of their living comes from going around the country testifying against State Farm.

There's been discussion about the PP&R program. There has been discussion about the fact that it's a good program but it has been misused.

We believe, when you hear the witnesses talk about the fact that they set goals, that they set objectives for themselves, that you will believe that the goals and objectives which are set have been proper. That it's appropriate, as you hear from insurance [196] commissioners, for a company to be aware of its expenses. If you're not aware of your expenses and you don't keep track of them, you will be out of business.

You will hear people from the management level say that you have to be aware of expenses, all expenses in the company, and deal with them appropriately. Through activity such as good investigations, proper staffing, making sure that lawsuit pendings are not too high, that expenses are being watched after appropriately.

While we don't, while I don't stand here and claim that State Farm has not made mistakes, they have. There are people that you will see PP&Rs from that will say, "I'm going to reduce expenses on claims by a certain percentage." But that is not the rule, that is not the majority of the people that have worked for State Farm, and that have these goals which are entirely appropriate, as you'll see in PP&Rs.

I'd like to talk now about the underlying accident. While there has been a jury decision in 1983, and the jury in 1995 decided that State Farm should have paid sooner, the question in this case becomes, did the decision process, or was the decision process reckless? Was it done with an intent to injure the Campbells [197] willfully, and in reckless disregard for their rights?

And I think, when we talk about this, you will see from the evidence as it comes into this case, that the decisions were not reckless, they were not willful, they were not made with any intent to injure or to harm the Campbells.

If I can just stand here for a moment, and I don't know if you'll be able to see these pictures, but this is a picture in the Dry Lakes area looking to the north in the roadway at the time of the accident. And this particular canyon, although it has twists and turns, this roadway in this area is straight for quite a distance.

This is a view of the roadway, if you were looking to the south. You come down a fairly steep hill into the straight stretch into what's known as the Dry Lakes area. But at this time it wasn't very dry.

At the time of this accident, you will hear testimony about the fact that this roadway, divided into a two-lane stretch, Mr. Humpherys, excuse me, Mr. Christensen talked to you about the witness by the name of Gerber. Do you recall that name? He said that he saw, according to him, in his rear view mirror, 150

feet to his rear, Mr. Campbell out here in this lane, Mr. Ospital passing like this, and another vehicle [198] occupying this lane. That was his testimony.

Now, the police investigation, which was undisputed at trial, was that the Ospital vehicle left some tire marks that went only approximately one foot into a five-foot emergency lane. Meaning that if this were, in fact, happening, and a person was even believed to be able to see that in their rear-view mirror 150 feet to the rear, that Mr. Ospital did not use more than a foot of this emergency lane to accomplish that maneuver.

You'll also hear Mr. Gerber say that there were a group of six vans. They were in a van club together, traveling up to the Bear Lake area. And he will tell you that these vans were stretched out over a distance of approximately a mile. And it's the testimony of Mr. Gerber and Mr. Slusher that Mr. Campbell, a 63-year-old man with engineering background, with the equivalent of a masters degree, in good health, with his wife sitting next to him, in no hurry, on their way back home, decided to pull out, over a period of over a mile, and pass six vans like a hot rodder. That is what the testimony of Mr. Slusher and Mr. Gerber were.

Counsel for Mr. Ospital, to Mr. Ospital's own insurance company, admitted the following: "These [199] plaintiffs do not make good witnesses." Excuse me, I misstated that. "The plaintiff," meaning Mr. Slusher, "does not make a good witness, nor do the numerous witnesses who are part of his caravan at the time of the accident," end of quote.

Mr. Campbell's position on this accident is that he and his wife were in no hurry, they were on their way back to Logan, that as they came off that hill to the south, that they had been passed by several vans, and that they had gotten behind a camper, a truck and a camper that was going approximately 45 miles an hour.

Mr. Campbell indicated that he pulled out, and when he was about even with the back of the camper, he saw, coming from the north, coming up over the hill, looking to the north, a car. And after seeing it, he realized that car was going substantially faster than he originally anticipated it, and indicated in his testimony that he was able to get back completely within his lane before the car ever arrived.

It was undisputed at the trial of the case that Mr. Campbell's car was never touched. Of the van drivers, you heard discussions about a Mr. Zucca, who was in this third van. He indicated at the scene of the accident that the other car had caused the accident.

There were varying statements among all of [200] these van drivers as to what they had seen, as to how many vehicles Mr. Campbell had allegedly passed, and where he had passed it, even to the point that one of them said he had made his pass on the hill, which would be physically impossible if there had ever been, to have the interposing of the Ospital vehicle.

The police Officer Parker, at the trial of the case, with no stake in the outcome, indicated that he measured. He is the person that saw the physical facts of this accident and made a measurement, went back out the next day to confirm those measurements, to check, from looking at them, if he had done it properly, made some adjustments to his diagram and felt he had done it properly.

And the evidence at the trial of the case was that he had used proper equations and other approaches to the evidence. It was disputed at trial that he may have measured properly, but his approach, his method was proper, according to Mr. Knight, the plaintiff's witness. And Officer Parker indicated that he calculated the speed of the Ospital vehicle at over 80 miles an hour.

Now, Todd Ospital that night was on his way to Ogden for a date, and he was late. And obviously nobody wishes that this accident

would have ever, [201] everybody wishes it would have never happened. But he went out to try and get his car started and couldn't get it started. And was late and had to borrow a car from a friend.

As you hear the testimony in this case, you will hear discussion about the fact that when Mr. Campbell pulled out here and saw the Ospital vehicle, that there was fifteen seconds of time, as these vehicles approached each other. And it was without dispute -- without much dispute, I can't say without any -- but without much dispute from the experts, that it would take somewhere around eight to perhaps ten seconds, but I believe eight was the figure, for Mr. Campbell to complete his pass, and that it was undisputed that Mr. Ospital had seven seconds where there was no braking, and if he would have simply braked, if he would have simply slowed down, there never would have been the confrontation that some of the van people claimed happened.

We're not going to retry the case in terms of asking you to come to a verdict, but you are being asked if the decisions of State Farm were reckless, done in willful disregard, to intentionally injure Campbells. And we believe you will find from the evidence that that simply is not the case.

[202] I'd like to talk to you about some of the events that you will hear about in this case, and to share them just quickly with you on a time line, so that as you hear about these facts and circumstances, you will have been introduced to it.

Obviously you know by now that the accident in this case occurred in May of 1981, and a lawsuit was filed shortly thereafter in September by Mr. Slusher against Campbell and Ospital.

In 1982, there was information being gathered about the case, and depositions that Mr. Humpherys and Mr. Christensen talked about.

What is very significant, that you were not told in either of counsel's opening statements, was about a deposition of Mr. Slusher. And what's important about that is, it's claimed, if you'll recall the opening statement, State Farm misrepresented to Campbell the facts of this accident.

Who was at the Slusher deposition that was taken in March of 1992?

MR. HANNI: '82.

MR. BELNAP: Excuse me, thank you, Mr. Hanni. It helps to have a friend behind you. Mrs. Campbell and Mr. Campbell attended the deposition of Robert Slusher in 1982. The same day that their depositions were taken [203] about the accident.

In that deposition, under oath, contrary to what Mr. Slusher had told Officer Parker in the hospital -- he had told the officer Campbells did not cause this accident -- at his deposition he said, "The cause of this accident was Mr. Campbell passing six vans." He said that several times, and indicated if that had not occurred, the accident would not have happened.

Now, to say that State Farm misrepresented, or concealed facts from Campbell when he was at that deposition, heard that with his own ears, saw the witness say that about him, simply does not hold water.

The case went to trial in 1983. Before the trial a settlement was reached between Slusher and Ospital, and after the trial Campbell directed Bennett to file a motion for a new trial and appeal. Talks began between Campbell, Slusher, and Ospital about suing State Farm in return, for agreeing not to execute on his property, and an appeal was filed as directed.

Talks continue in 1984, Campbell is told that his property would not be taken in that letter that I showed you earlier, draft of an agreement is exchanged saying that Campbell signs

the agreement, Slusher and Ospital sign the same agreement, agreeing that they get [204] 90 percent of the proceeds from this case, that Campbells get 10 percent, and that the attorneys have a 40 percent contingency fee under that agreement protecting all of Campbells' assets.

The case remained on appeal, as Campbell had directed, in 1985, as Mr. Humpherys talked to you -- or Mr. Christensen, I can't recall -- back in the '80s, in the early '80s, we only had one court of appeal in the state of Utah. That was the Supreme Court. Five justices would hear all cases that were taken on appeal. We now have two courts of appeal system in Utah, which has substantially speeded up the docket. But this case remained on appeal from December, 1983, all the way down to December, 1989, waiting for the decision from the Utah Supreme Court.

During this time, however, State Farm wrote a letter saying, "If the appeal is not successful, we'll pay the judgments in full," even though Campbell, through his attorney, had said that's exactly what he wanted us to do in September of 1983. That was, again, confirmed in August of '86, and Campbell in his deposition has claimed that he was never told about this agreement that State Farm had unconditionally filed with the court saying that they would pay. That the case continues on appeal, '87, '88, and in '89 the Utah [205] Supreme Court decides the case. State Farm immediately pays the judgments with interest and costs, and after doing so this case that we're on here today was filed.

In 1990, Mr. Campbell's deposition was taken again in this case, and he was told, or he told Mr. Hanni at that time that he was not told that State Farm had paid the judgments, had satisfied them, and had filed, it's undisputed, that it had been filed with the court in July of 1989, that the judgments were fully paid and satisfied, by both Mr. Barrett and by Mr. Humpherys' firm on behalf of the Ospitals.

In 1991, an appeal was taken during the course of this case. In 1992, a decision was made on that appeal, and this case has proceeded to 1994, when another appeal was taken on some issues. That appeal was decided in 1995, and this case proceeded to the first jury that has been talked to you about in the fall of 1995. Giving you an understanding of what took place during this time period.

As we talked about, during the course of the trial, or the course of the handling of the underlying case, there was an agreement entered into on June 3rd, 1983. That agreement, among other things, indicated that Ospital, through Allstate Insurance Company, would pay to Slusher $65,000, that a release would be [206] executed, and from that point, Ospital and the attorneys currently retained by Ospital shall assist Slusher in the prosecution of his claim against the other party responsible, and that if there was a judgment in excess of the insurance limits and a case proceeded against State Farm, that they would share in the proceeds of that.

I want to talk to you about some of the other people that you've heard talked to and names mentioned in this case, before I proceed with the 1984 agreement. You will hear testimony from Ray Summers in this case. Mr. Summers, what you have not been told was that in September, 1981, Mr. Summers was found to have improperly handled a file, and created a bogus record in a file in September of 1981.

Now, the evidence will be, if State Farm had an intention to conceal those kind of things, they would not have done what they did with Mr. Summers. What they did was put him on probation right then and there, in September of 1981, and took a statement from him and asked him if this had been a reoccuring practice on his part, and he indicated to the contrary.

When his performance was not acceptable thereafter, as an employee, he was terminated in 1982, before this Campbell case ever went to trial. He was [207] not terminated because of the Campbell case. He was terminated for poor performance. He turned around and filed a lawsuit against State Farm in the Federal District Court here in Utah.

That case was thrown out by Judge Green, in a judgment December 15th, 1986. By his own words in that case, his claims in that case were that State Farm had discriminated against him, and that State Farm was guilty of unfair claims practices, and that case was thrown out.

He appealed that case to the Tenth Circuit Court of Appeals in Denver, which is the federal system of appeal, as opposed to the state system. And in that appeal, the Tenth Circuit Court of Appeals confirmed the dismissal of his lawsuit, indicating that he had been put on probation in 1981, and that this conduct on his part did not warrant a case standing against State Farm.

When you hear Mr. Summers claim that he changed the claim file in this case at the direction of his supervisors, I would like you to reserve judgment until you hear from his co-workers, who he claims he told that he was ordered to do this. Arch Geddes, Ellis Christensen, both retired now, no stake in the outcome. Clark Davis, a current employee of State Farm, who he claims he told. Marilyn Paulsen, the secretary up [208] there, who he claims was involved in knowing that these things were taken out of the file and changed. All of them indicate to the contrary.

With respect to this accident, and the question of whether or not State Farm was reckless and in disregard of the Campbells' rights, and intentionally intended to hurt them, you will hear testimony from other insurance companies that were involved in this investigation, who have indicated that

in their opinion Ospital was at fault. You'll hear the evidence with respect to the investigating officer that felt the same.

You'll hear Campbells' position that continues to today. You'll hear Mr. Campbell say that he has respect for Mr. Bennett and what he did. You'll hear testimony that Campbell, even though a lawsuit was filed in this case in 1989, alleging fraud, misrepresentation, intentional misconduct against State Farm, continued every six months thereafter to renew his insurance policy with State Farm, up through 1994, as this case was getting ready to come towards trial.

You've heard allegations that State Farm improperly deals with and destroys records. I want to share with you something about the magnitude of the records that exist in a company, in an insurance company like this. You'll hear testimony that on a yearly basis [209] State Farm processes about 14 million claims nationwide. Now, that's all kinds of claims, property damage, first party, third party, all sorts of claims, 14 million.

At any one time they have millions and millions of claim files, and documents. And if these documents are allowed to stack up, with no business purpose or regulatory purpose, that you simply get buried in needless paper work.

Because of that fact, when the plaintiff in this case says that State Farm improperly destroys documents, the evidence will be that when State Farm has a manual -- and you'll see a lot of the manuals in this case, this book isn't one of them, but just for example -- you'll have a manual that has hundreds and hundreds of pages in it. The program has been that if parts of the manual are changed, you take out the old part, you throw it away, and you put in the new part.

That is the claim, among others, that Samantha Bird talks about, which you'll hear testimony to the contrary, that, "Old manuals, throw them away. We don't use them, we don't want to be using old manuals."

A prime example of that is this Excess Liability Manual that's been talked about in this case. That document was created, the evidence will be that it [210] was created by, not by State Farm Mutual Automobile Insurance Company, but by State Farm Fire and Casualty Insurance Company. On the face of that document, it says, "1972."

Now, if a company continues to be judged by documents which are created at a given time, that are obsolete and not in existence, from now until eternity, that simply isn't appropriate.

The evidence will be in this case that this document, created by the fire company, was never used here in Utah. I could go down and list through the people, there's been twenty or thirty depositions taken by Mr. Humpherys and Mr. Christensen. People after people, whether they're for or against the plaintiffs in this case, will say, "I never saw this document. I never used this document. I was not trained in this document."

The only person in Utah, or the only people in Utah that say anything different about that is Mr. Summers, an admitted liar, Mr. Crowe, who claims that he received this document back in Virginia, and when he moved to Utah in 1987, or '86, he brought this document with him. But he admits that he was with the fire company, not the auto company, and that he did not train the employees in anything that's talked about in [211] this document.

But this document is evidence for the fact that a company that has manuals that are not in use any more, that have been obsoleted, it is simply appropriate to discard them and to move on with the new and appropriate, up-to-date manuals.

I'm close to being done, you'll be out of here by 4:00 o'clock. Do you want to take a vote on that? Can you bear with me for fifteen more minutes?

After the 1983 judgment, Mr. Campbell went in and consulted with Hoggan and Jensen, and we looked at their letter that they wrote to Mr. Bennett, September of 1983, directing that a motion for new trial be filed, and an appeal.

And stating -- I'm just getting used to my glasses after a few months -- but stating, "If, for any reason, State Farm fails to fully follow through on the matter to its conclusion, and if an ultimate decision is adverse, to pay the same in full." Stop. If you don't do that, then they say, "We will look to State Farm for substantial punitive damages."

State Farm took those directions. They followed them, they filed an appeal, they paid. They satisfied the judgments that were entered.

Verbal, written, and ultimately a signed [212] agreement was entered into in December of 1984. But I want to show just a few portions of that agreement, and you'll have a chance in this case to see that agreement in more detail. Please let me read with you on this agreement.

"Slusher and Ospital shall not execute on any of the personal assets and property of Campbell, except as it relates to the insurance policy with State Farm or any other insurance policy. The judgment shall remain owing and satisfied only to the extent that payment is made thereon. Nevertheless," now that's kind of a lawyer word, but "nevertheless, in the event any credit check is made by a credit agency, Slusher and Ospitals shall disclose that Campbell has no personal liability on the same, and that none of his assets are subject to execution in order to pay the same.

"Slusher and Ospital agree to execute a partial release of said judgment upon request of Campbell as to any real property Campbell may be buying or selling."

In return for that, Campbell has agreed to file a lawsuit against his insurance company, that he told he was not at fault, and to share the proceeds of this lawsuit on the following basis.

The proceeds of this case, under this [213] December, 1984 agreement, of every dollar that is awarded in this case, 40 cents goes to the attorneys, 27 cents to Slusher, 27 cents to Ospitals, 6 cents to Mr. Campbell, with Slushers and Ospitals having had their judgments paid in full, with interest and costs.

MR. CHRISTENSEN: Your Honor, I need to interpose an objection and set the record straight. Counsel said every dollar awarded in the lawsuit. That's incorrect.

MR. BELNAP: To Mr. Campbell, I said.

MR. CHRISTENSEN: But not to Mrs. Campbell.

MR. BELNAP: I said to Mr. Campbell.

MR. CHRISTENSEN: I'm sorry, I misheard you.

MR. BELNAP: Mr. Humpherys told you -- I want to wrap up just a couple of quick things -- indicated to you that the court, that they are seeking attorneys fees. The court will handle that at the end of the case by the judge himself, and will instruct you that you do not need to concern yourself with attorneys fees at the end of this case.

I want to thank you, again, for your time and for your patience. I realize, having spoken to several of you in chambers, the hardship that this case will present to you. All I can do is thank you in advance for your attention, your cooperation, and all we ask, as [214] the plaintiffs have too, that as judges of this case you are fair and impartial in coming to your verdict. Thank you.

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EXCERPTS OF TRIAL TESTIMONY OF MICHAEL J. ARNOLD, JULY 26, 1996

[Vol. 30, R. 10285, commencing at p. 134]

* * *

MICHAEL J. ARNOLD called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Arnold, will you tell us what your full name is, and what city you reside in?

A My name is Michael James Arnold, and my residence is located in Draper, Utah.

Q And who are you employed by, Mr. Arnold?

A I'm employed by State Farm Mutual Automobile Company here in Utah.

Q And this jury has heard a number of witnesses talk about the organization of State Farm, and has heard your title referred to before, but can you tell us what your title is at State Farm?

A My title is a divisional claim superintendent. And what that means is I am responsible [135] for the auto claims operation from the Salt Lake City metro area down to the Arizona border.

Q And they already heard testimony from Mr. Kingman, who's also a divisional claims superintendent for the state of Utah, that's divided basically into half as you've described it; is that right?

A That's correct.

* * *

[140] * * *

Q Now, as a manager in working with people, the jury's seen the PP&R program, and PP&Rs from various people. As you work with your employees, both when you were in property damage and bodily injury in California, but also, more importantly, here in Utah, since this is a Utah case, as you work with your employees, Mr. Arnold, do you work with them to have any goals in this particular area?

A Yes. In fact, on my PP&R, I have a PP&R with goals that I want to accomplish during the year. And on that PP&R I have specific goals regarding community activity. Specifically those are participate in the "Adopt-a-School program" and participate in the "Paint-Your-Heart-Out Program."

I'm responsible for approximately 130 employees, and I would guess that roughly 80 percent of them or more have community activity or community service goals included on their PP&R.

Q Now, why would State Farm have people with community service goals on their PP&R, Mr. Arnold?

A Well, simply stated, State Farm is a company that encourages community involvement. I mean we have over 1,000 claim offices, so we're in most communities within the United States, and we want our employees who [141] live in those communities to be active.

Q Has State Farm won any awards, independent nationwide awards, for outstanding community service or investment in the community?

A Yes, we have --

MR. CHRISTENSEN: Your Honor, I'm going to object to this. I want to preserve the record. This witness was designated for three subjects a few weeks ago, before the trial, none of it involved any of this. We haven't heard any

of this testimony, nor have we had discovery on it. And I want to preserve my objection to them introducing evidence through a witness when it was represented he would cover something else.

MR. BELNAP: Then I want to preserve the record, which I thought this was covered at a previous bench conference and ruling from this court, Your Honor, that we had supplied this information to counsel, we designated that we would be talking about this area on matters that Your Honor asked us to give to you, which is on there.

We did designate that this would be talked about by a different witness, but more than a month ago we advised counsel in writing that because of scheduling we were changing the name of the witness that was speaking to this area, and this has been ruled on by the [142] court.

MR. CHRISTENSEN: Well, I don't recall any awards in the material you supplied us.

THE COURT: Objection overruled.

Q (BY MR. BELNAP) Has State Farm received any awards?

A Yes. We've received several awards, and the most significant, I think, is what's called the Community Investment Award, and it was presented to State Farm in 1992. And what that's a part of is, State Farm is very involved in an association called the Neighborhood Housing Service, and what that is, is we participate in rebuilding houses in low-income areas, we participate in building new houses in those areas, and we were recognized with, along with nine other financial corporations, as being the best in the United States with regard to our involvement with the Neighborhood Housing Service.

Q Now, with respect to the Neighborhood Housing Service, is it mentioned in Exhibit Number 178-D, which --

MR. BELNAP: I'd move its admission at this time.

THE COURT: Any objection?

MR. CHRISTENSEN: This is the pamphlet?

[143] MR. BELNAP: Yes.

MR. CHRISTENSEN: Just the ones we've made. I would like foundation to know if this is State Farm Auto, the defendant, or some other entity that's doing this.

Q (BY MR. BELNAP) Mr. Arnold --

A I don't understand the question. Could you clarify for me, please?

Q Does the exhibit that I've moved for the admission, describe the activities that State Farm Mutual Automobile Company involves itself in?

A Yes, it does.

Q And you're here today as an employee describing the activities that the auto company involves itself in?

A That's correct.

MR. BELNAP: I'd move for its admission, Your Honor.

THE COURT: Received.

(WHEREUPON Exhibit Number 178 was received into evidence.)

Q (BY MR. BELNAP) Does this pamphlet, just very generally, address the neighborhood housing as one of the programs State Farm's involved in on a community basis?

[144] A Yes, it does on page 7, and partially on page 8.

Q Now, with respect to that program, has State Farm, in addition to being involved locally, like with yourself, where you indicated that you and your employees will be involved in painting some homes, is there a financial contribution that State Farm has made to this non-profit agency for people to obtain loans to get homes?

A That's correct. On page 8 it refers to a grant that State Farm provided in 1993 for $30 million, and that grant was intended to provide assistance for low income individuals to purchase houses in certain areas.

MR. BELNAP: Judge, can I have just a few more minutes on this area and we might be able to wrap it up?

THE COURT: Certainly.

Q (BY MR. BELNAP) Mr. Arnold, have you made a list of some activities and programs that you, with your employees, have been involved in here in the state of Utah, and were in place and processed before you came and took the job as divisional?

A Yes, I have.

Q Could you just briefly--if you need to refer [145] to a piece of paper to refresh your recollection at all, you may do so--but could you just briefly walk the jury through some of the community service that local State Farm people have involved themselves in?

A I have a list of twenty-three items. Would you like me just to hit the high points?

Q Sure, and if you could just briefly explain as you walk through them.

A Okay. State Farm is involved in the Neighborhood Housing Service, and that involves painting houses for elderly people or in low-income areas. In fact, August 17th, which is two and a half weeks away, we're going to be painting seven houses here in Utah.

We've been involved with St. Vincent de Paul, both at the soup kitchen, and last year we went down and decorated, we bought the Christmas trees and paid for some decorations and decorated the soup kitchens for those individuals.

We're very involved in a program called "Understanding the Promise" program. And what that is, is, Mr. Belnap has several binders over there where we donate kits on safety items. Those are them. It talks about fire safety, earthquake safety, self-esteem courses, and there's a video and there's

some written documentation. And all that needs to happen is schools [146] request those, and we provide them with those binders.

* * *

[154] * * *

Q (BY MR. BELNAP) The first page of Exhibit 169, is this the original application of Mr. Campbell when he became insured with State Farm?

A Yes, of Curtis Campbell, that's correct.

Q And who is the person that was applying for [155] the insurance?

A Curtis B. Campbell.

Q And the date of that?

A August 15th, 1980.

* * *

[156] * * *

Q Mr. Arnold, I want to move to another subject area. In your PP&R, as a divisional claim superintendent, do you have average paid costs, or reduction of indemnity goals in your PP&R?

A No, I do not have those goals on my PP&R.

Q And do claims representatives in your unit have such goals?

A No, they do not.

Q I want to move to another subject area, Mr. Arnold, and that is, there's been some discussion during the course of this trial about some class action lawsuits. Do you know what a class action lawsuit is?

[157] A Yes, I do.

Q While you were working in the state of California, did you become aware of two particular class action lawsuits that had been filed against State Farm, one in the state of California and one in the state of Illinois?

A Yes, when I was in California I became familiar with both of those cases.

Q Now, why did you become --

MR. CHRISTENSEN: I just want the record to reflect the objection I made earlier to this on the grounds I raised earlier, including the fact we didn't learn he was going to do this until last night.

MR. BELNAP: And this is an area that Your Honor heard argument on, and we didn't know this was going to be raised until the course of the trial, and he's aware of these cases, and you ruled that we could go into it.

THE COURT: The objection is overruled.

Q (BY MR. BELNAP) Did you -- Let me back up. The cases that you became aware of, Mr. Arnold, among others, did they include a case from California and one from Illinois?

A Yes, that's correct.

Q And what's the name of the, the last name of [158] the case from California that you became aware of?

A The last name of the plaintiff is Krinsk.

Q And that's spelled, for the reporter K-R-I-N-S-K; is that right?

A Yes, that's correct.

Q And the case from Illinois that you became aware of?

A Krusinski.

Q Spelled K-R-U-S-I-N-S-K-I?

A I think so. I'll take your word for the spelling.

Q Okay.

MR. CHRISTENSEN: Your Honor, could I voir dire the witness? I have a lot of trouble believing that he has personal knowledge of a case in Illinois.

MR. BELNAP: Your Honor, I think I ought to be entitled to lay a foundation and to ask him the questions before my examination is taken over on voir dire for some other reason.

THE COURT: I'll allow you to proceed before any voir dire.

Q (BY MR. BELNAP) While you were in the state of California, you've indicated before the lunch hour that you were involved in property damage supervision and as a superintendent; is that correct?

[159] A That's correct, both in the Bay Area and in the Stockton area, Sacramento area.

Q And why is it that you became, or how is it that you became aware of these cases, and for what reason were they of interest to you?

A Well, as a property damage supervisor or superintendent, the issues in these two cases would affect the area that I was responsible for. So I was interested in both cases. Both cases have similar issues in them.

Q And did you learn of these cases while you were in California?

A Yes, I did.

Q And to your knowledge -- I realize you're not a lawyer -- but to your knowledge, are the pleadings in these cases a matter of public record that a person could go read and research up through the present time if they choose to do so?

A I believe they are.

Q Now, with respect to the Krinsk case, the case from California, in some materials that Mr. Christensen supplied me with, I guess it was a week or so ago --

MR. CHRISTENSEN: It was a month ago, Paul.

MR. BELNAP: Well, time flies when you're [160] having fun.

Q (BY MR. BELNAP) In the materials that, whenever he made me a copy of these from his book, did you have an opportunity to review these materials that were in his looseleaf with counsel?

A Yes, I did.

Q And although the materials on the Krinsk case include an order earlier in the case, and a settlement agreement, is there additional information about this case that's not included in the book?

A Yes, there is.

Q Now, can you just tell us briefly, Mr. Arnold, what was the nature of the allegation that was being brought in the Krinsk case?

A In the Krinsk case --

MR. CHRISTENSEN: Your Honor, I'm going to object again for lack of foundation. This witness has not established he's got any personal knowledge. And we were precluded from getting into the specifics. We could just get into the fact they existed. On those two bases I object.

MR. BELNAP: Your Honor, I'm not going to give a big discourse on the case, but by way of foundation, to have him talk about the facts as they really exist, I just need a very brief explanation.

[161] THE COURT: All right, overruled.

Q (BY MR. BELNAP) What were the basic allegations that Mr. Krinsk brought against State Farm in this case that he then attempted to have turned into a class action?

A Well, the original complaint that Mr. Krinsk brought was alleging that a term, what we call prevailing competitive price, didn't allow him to have the car fixed at the repair shop where he wished to have it repaired.

Q Did there come a point in time in the case where the allegations were broadened beyond that?

A Yes.

Q And if so, just briefly --

A I don't know the exact date, but the class action was broadened, and that's at the time it became similar to the Krusinski case, and the allegations in that were that the non-original equipment manufacture parts that were being put

on some cars were not of like kind and quality, and the second thing was the allegation was that people that were receiving these parts were not being notified initially about those.

Q Now, do you know who Mr. Krinsk was in relationship to the plaintiff's attorney firm that represented him?

[162] A Yes, I do. Mr. Krinsk was the plaintiff on this class action suit. He was also an employee of the law firm that handled the lawsuit as plaintiff.

Q Now, let me represent to you, Mr. Arnold, since you weren't here during the pendency of this trial, I'm putting up on the board, Mr. Christensen, the trial transcript, referring you to page 90 of the trial transcript. Mr. Christensen was asking a witness, "State Farm Insurance have agreed to redo collision repairs back to '87 for California policy holders dissatisfied with repairs made with replacement parts."

Going down to this question that was asked, "Do you know how many people were affected in this California lawsuit?"

Answer. "No."

And then going to page 91, "In the class action?"

"No."

Question. "Any idea?"

"No."

Question. "Would it surprise you if I told you it was over 2 million?"

Now, Mr. Arnold, can you tell this jury how many people ended up making a claim that they were dissatisfied with their after-market parts?

[163] A 2,215.

Q And under the court procedure that is a matter of public record in that case, did the court make a determination as to how many people had received after-market parts who should be notified of the settlement in this case if they're dissatisfied with those parts?

A Yes, it was 45,000.

Q And do you know if State Farm sent out a letter, pursuant to the court direction, with a claim application to those people?

A Yes, a letter was sent with a claim application to those 45,000 people.

Q Now, in addition to that, do you know if the court directed that any other advertisement take place in newspapers in the California, in the state of California?

A Yes, I believe it was on two different occurrences in four of the major newspapers in California, an advertisement was run with this information, advising people how they could make a claim.

Q And do you know if, in addition to having that advertisement, if there was a 1-800 number provided for people to call if they were dissatisfied?

[164] A Yes, that was part of the advertisement.

Q And do you know if the plaintiffs in that case, claiming that there were 2.3 million people that were affected, when they tried, when they initially filed this lawsuit?

A That's my understanding.

Q Now, as a result of the court finding that State Farm should send out 45,000 letters, how many people -- and the advertisements with the 1-800 number -- could you give me the number, again, of the number that responded and filed a claim that was found to be valid?

A 2,215.

Q Now, under the court settlement that was reached in that case, what was agreed to be paid to those people if their claim was found to be valid?

A There were two parts of the settlement. The people could choose to receive $35 if they felt that the part they received was inadequate, or they could receive a guarantee form from State Farm, where they could take their car in and get that part repaired and then the bill would be sent to us.

Q Now, total payments on that case, Mr. Arnold, have consisted of how much?

A With 2,215 claims, total payments, $87,000.

[165] Q Now, Mr. Arnold, as part of the settlement agreement that's a matter of public record, can you tell the jury if the attorneys that were --

Well, let me ask you this first. Was Mr. Krinsk one of the attorneys in the law firm of the plaintiffs' firm for this case, did he end up making a claim that after-market parts were defective or inferior?

A He was the original plaintiff in the case, but he did not make his claim for $35 or request a certificate.

Q And can you tell the jury, as a matter of public record, how much the plaintiff's firm in this case claimed for and said they needed to receive as attorneys fees?

MR. CHRISTENSEN: Your Honor, this is way beyond. And let me reiterate, I would love to have put on witnesses to tell about these class actions, and we were not allowed to. And now he's getting into details that we have no opportunity to rebut an hour before this trial ends. I object to this, and especially going as far as it's going now.

MR. BELNAP: Your Honor, could I speak to that, please?

THE COURT: You may.

[166] MR. BELNAP: The purpose for that question is, if you compare the amount of people that were actually dissatisfied --

MR. HUMPHERYS: Your Honor, could we have a bench conference on this?

MR. BELNAP: -- compared to what was paid, and what the attorneys claimed and got, that's the reason I'm asking it.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Objection sustained.

Q (BY MR. BELNAP) Mr. Arnold, let me reference to page 104 and 105 of the trial transcript, where the following questions were asked by Mr. Christensen.

"And again, your testimony is that you don't know of a single instance where State Farm has been unfair to anybody?"

Answer. "I have no direct knowledge."

Question. "It looks like you may have overlooked a few million, didn't it?"

Question from Mr. Christensen. "We just looked at class actions where State Farm has agreed to pay millions of people, haven't we?"

Now, Mr. Arnold, is it true, from these cases, that State Farm paid millions of people?

[167] A No. The Krinsk case, like I said, was a little over 2,200.

Q Now, in the state of California, Mr. Arnold, if you consider that there were some 2,000 people that made a claim and received $35, could you give us some idea, in terms of, the proportion that 2,000 would have to the number of people that would be insured by State Farm in the state of California that may have had a property damage claim, and had their car repaired?

A I don't know the exact number of policy holders in California, but I think it's safe to say it's less than 1 percent.

Q Now, in the Krinsk case, in the materials that Mr. Christensen had in his booklet, on page 5 does it indicate that, as part of the settlement -- Let me ask you, let me just refer you to the document. On page 5 of the document that Mr. Christensen had, can you tell us whether or not it addresses whether there's been any finding or determination that State Farm has been dishonest, or has dealt improperly with anyone?

MR. CHRISTENSEN: Is this the California case?

MR. BELNAP: Yes.

MR. CHRISTENSEN: Well, I object to this. It's misleading. It was settled. There wasn't a [168] finding. It settled.

MR. BELNAP: You had implied to the contrary with the witness, counsel.

Q (BY MR. BELNAP) Is there any finding in here where it indicates that State Farm has been dishonest or has cheated anyone?

A No, there's not.

Q I want to refer you to page 7 of the agreement. Does the agreement provide, with the authority of the court, that State Farm is entitled to continue to use after-market parts as a continuing repair option with vehicles?

A Yes, it does.

Q I want to talk to you about one other case. I won't take the time to go into the other ones that were talked about, other than this one other, and that's the Krusinski case. Can you just tell the jury briefly what that case was about, Mr. Arnold?

A That case was about the same issue that came up in the Krinsk case, later on, and that issue was that the after-market parts that were received in the Krusinski claim were not of like kind and quality, and that the notification was not being given to the people that were receiving those parts.

Q Now, let me represent to you -- And [169] Mr. Christensen asked the following question on page 86 of the transcript. "And so, in spite of the fact that there was a court settlement indicating that 80,000 people -- "

And what state is this from?

A The Krusinski case.

Q Yes?

A This is from the state of Illinois.

Q "So in spite of the fact that there was a court settlement indicating that 80,000 people had been mistreated by State Farm, you didn't investigate."

Now, Mr. Arnold, can you tell us, from the Krusinski case, if there was any finding that State Farm had mistreated anyone, much less 80,000 people?

A No, there was not.

Q From the Krusinski case, Mr. Arnold.

MR. CHRISTENSEN: Same objection, misleading.

THE COURT: Overruled.

Q (BY MR. BELNAP) From the Krusinski case, Mr. Arnold, can you tell this jury, as a matter of public record, whether State Farm sent out letters to people in the state of Illinois with claim forms, saying, "If you're dissatisfied with your repairs, you can bring them in and make a claim"?

A Yes, we did. We sent out 80,000 forms, [170] 80,000 letters initially, and on those 80,000 letters we followed up with 60,000 claim forms to that same group of 80,000 people.

Q Now, in addition to sending out those letters and those claim forms, Mr. Arnold, did State Farm put publications in Illinois newspapers about this matter?

A Yes, four different Illinois newspapers.

Q And in response to those newspaper articles, and the letters that were sent out, can you tell us how many people came in and asked to have their cars looked at for any dissatisfaction?

A Well, the 80,000 letters we sent out, we had 1,301 responses for valid claims.

Q And of those people, did they have the option to receive $40 or a guarantee on their car?

A That's correct.

Q How much did State Farm end up paying to those people under the Krusinski case?

A Of the 80,000 letters we sent out, we ended up paying a total of $77,525.

Q Now, I think you may have interposed that with the Krinsk case, Mr. Arnold. I think Krusinski was eighty-seven and the Krinsk was seventy-seven, but I don't want to debate the point.

A That could be, I have a lot of things in my [171] head.

Q Nevertheless, Mr. Arnold, was there any finding in the Krusinski case of State Farm dealing improperly with their insureds?

A No, there was no finding in that case, either.

Q And so when it was indicated by a question that 80,000 people had been mistreated from the Krusinski case, is that a correct statement?

A No, it's not.

MR. BELNAP: Your Honor, I would just ask to proffer a question at this point that's been objected to about the attorneys fees that were asked for in that case, as well, and the large proportion that that exceeded what was actually paid.

THE COURT: I'll sustain the objection on the same grounds.

Q (BY MR. BELNAP) Mr. Arnold, just one final question in this area, and then I'll move on. I want to refer to page 155 of the trial transcript in this case.

From the materials that you've reviewed and that are a matter of public record, is it a correct statement to have said, "Do 2 million people being mistreated in California on parts, is that a pattern and practice, or is that insignificant?"

[172] Now, Mr. Arnold, from the Krinsk case, is there any support for the fact that 2 million people were mistreated in that case?

A No, there's not.

Q I want to move to a different subject area, Mr. Arnold. Were you asked, in this case, to make a determination as to

how many verdicts in excess of the policy limits had occurred on a State Farm Auto, or a State Farm policy here in the state of Utah?

A Yes, I was. As part of this case, we needed to determine the number of excess verdicts on third-party cases that had occurred in the state of Utah between 1978 and 1995.

Q Tell the jury what you did to find out about that, Mr. Arnold. Because it's been represented by plaintiffs in this case that you simply made a few calls. Can you tell us what you did?

A Well, it was significantly more than making a few phone calls and checking around. What I did was a two-prong approach. Number one, I called our personnel department and got the name of every single management person that was in Utah, or responsible in Utah for that seventeen-year period.

I then contacted each one of those people, except for one individual who was retired, and I could [173] not reach. That included contacting two or three retired people that I was able to reach.

And I asked each one of those people, "Can you tell me, of any of the cases you've handled, which ones are excess verdicts?"

I developed a list. I then contacted each of the defense counsel in Utah that had handled these cases. I contacted Rick Glauser, I contacted Phil Ivie, I contacted Darwin Hansen, I contacted Richard Spratley, and I contacted Mr. Belnap's office. And I asked them, I needed them to do a check within their firm of files they'd handled with excess verdicts.

I developed a list from each location and they matched. And when they matched I knew that I'd located all the files.

Q And Mr. Arnold, in excluding this Campbell case, how many verdicts in excess of limits occurred between 1978 and 19 --

A '95?

Q 1995.

A I can tell you that, that would also include through 1996.

Q In the state of Utah?

A Yes, that's right.

Q How many?

[174] A Seven, including the Campbell case.

Q Now, how many people, just approximately, that had worked in Utah, that were retired, or had been transferred elsewhere, did you talk to besides the attorney firms that you've mentioned?

A I talked to roughly thirty individuals, either currently employed in Utah, or across the United States, and retired people, and it took me approximately forty hours.

Q Now, would you have rather had some statistic that you could go back to and save your time?

A Well, sure, it would have made it a lot easier for me. Absolutely.

Q But Mr. Arnold, in terms of what you found from your investigation -- And by the way, are all these a matter of public record if somebody wanted to go research the court dockets?

A Yes, if they're part of the court dockets, they would be a matter of public record, that's correct.

Q In view of what you found, Mr. Arnold, if you were to have a document that kept track of these cases, what would that document read in most of the years?

A Well, between 1978 and 1981 it would have read zero. Between 1983, which I believe is the trial date on this Campbell case, and 1992, a nine-year [175] period, it also would have read zero. And from 1993 to current it would have read zero.

Q I want to ask you some questions about just some of these cases, because there are some allegations that may be pertinent to State Farm's practices in terms of any evolution of how State Farm handles these cases since the Campbell case.

A Would it be okay if I refer to my summaries?

Q You certainly can.

A Thank you.

Q Mr. Arnold, I want to first refer you to the Murphy case.

A Okay.

MR. CHRISTENSEN: Your Honor, I want to impose an objection to the extent this witness relies on any evidence that's been withheld from us, and most of these files have been withheld. We got a few documents last night. But to the extent he's going to rely on anything in those files that hasn't been produced, I object.

MR. BELNAP: Your Honor, we've been across this bridge two or three times, and Your Honor even instructed the jury relative to these files, and we have complied with what you asked us to produce out of these materials. And so if he's objecting to preserve the [176] record, that's fine. But otherwise I want to set it straight so I can proceed.

THE COURT: Well, just so it's clear, the basis of the court's prior ruling was that the files had not, that there was not detailed information that had been developed out of the files, but rather, just summary information, and the information I required to be produced would then have allowed some examination of that summary information.

I think that the objection is a valid objection, I'll sustain it if you're going to go into the files beyond what has already been discussed, for reasons that Mr. Christensen stated. If you're going to stay at that same summary level, then you can proceed.

MR. BELNAP: I am, Your Honor.

THE WITNESS: Mr. Belnap, what I'm referring to is exactly what we've produced to Mr. Christensen.

MR. CHRISTENSEN: Well, before we go on, they produced a summary without the backup documents. So that's not --

MR. BELNAP: Which was in compliance with what we were asked to do by the court. It was only a few days ago that they requested additional information that you asked us to get, and we have produced that, Your Honor.

[177] MR. CHRISTENSEN: My point is, Mr. Moskalski gave us some summaries but didn't give us the files they were based on. So I don't think that's the same as producing the information.

MR. BELNAP: Well, we've been over this, Your Honor --

THE COURT: Just ask your next question and we'll deal with it on a question-by-question basis.

Q (BY MR. BELNAP) With respect to the Murphy matter, is that a case that's entitled Brumley versus Murphy?

A Yes, it is.

Q Now, I want to --

MR. HUMPHERYS: Your Honor, can we approach the bench?

(Side bar conference held out of the hearing of the jury.)

THE COURT: Let's take a stretch break.

Q (BY MR. BELNAP) Mr. Arnold, I want to ask you if this is a document that you obtained with respect to this case that was filed after the case was handled?

A Yes, that was part of our file and the document that I retained; that is correct.

Q Now, in this particular case, the Brumley versus Murphy case, can you tell us if, after the [178] verdict came in for an amount in excess of the policy, if State Farm filed an appeal?

A Yes, we did file an appeal.

Q And in that case, Mr. Arnold, did State Farm file a bond and obtain, as we just had up on the screen, a stay of execution, but did they file a bond for over $25,000 over the entire judgment?

A That's correct. The judgment was a little over $75,000 and the supersedeas bond was for $100,000.

Q And was that more than the policy limits?

A Yes, it was more than the policy limits.

Q Now, in that case, had there been some offers before trial and some demands?

A Yes, there were.

MR. CHRISTENSEN: Your Honor, I'm going to object to this. This is clearly evidence that's been withheld from us.

MR. BELNAP: Judge, this is right on the summary.

MR. CHRISTENSEN: It is in the file they won't produce. All they've produced is the post verdict, and I strenuously object to having information from pre verdict that's been with withheld from us.

THE COURT: Sustained.

MR. BELNAP: I'd be happy to not go into it [179] if that's not going to be gone into on cross, that's fine.

MR. CHRISTENSEN: How can it?

THE COURT: You set the parameters.

MR. BELNAP: That's fine.

Q (BY MR. BELNAP) Now, in this particular case, ultimately was this case settled?

A Yes, it was.

Q And each side had filed an appeal.

MR. CHRISTENSEN: Your Honor, there's been a direct violation of the court's order.

Q (BY MR. BELNAP) Did each side file an appeal during the case?

A Yes, they did, both sides did.

Q And did they stipulate and agree to the dismissal of the case after a settlement was reached?

A That's correct.

MR. HUMPHERYS: Your Honor, we -- Can we approach the bench once more?

THE COURT: You may.

Q (BY MR. BELNAP) Mr. Arnold, I want to talk to you about whether -- Let me move on. Let me ask you about the Hall claim.

A Okay.

Q Did that case result in an excess verdict?

[180] A Yes, it did.

Q Was there a claim committee filed after that case to determine what should be done in terms of paying it?

A Yes. Would you like me to tell you what the decision of that claim committee was?

Q Well, let me just ask you if the recommendation from the local claim committee differed from what the general claims office decided to do?

MR. CHRISTENSEN: Same objection. We haven't seen the claim committee report.

MR. BELNAP: I'd be happy to move on, if that's not going to be covered in cross, Your Honor.

MR. CHRISTENSEN: I don't have the claim committee report.

THE COURT: Objection sustained. Move on.

Q (BY MR. BELNAP) Was this case resolved, Mr. Arnold?

A Yes, it was.

Q And pursuant to the summary that was provided to counsel, was a letter provided to the insured that their income and assets would not be at risk?

MR. CHRISTENSEN: Your Honor, I object to that, as well. We haven't seen that.

MR. BELNAP: Your Honor, that's part of the [181] summary and the request that was made to the court that went beyond the previous requests and orders on this subject to provide the post verdict correspondence.

THE COURT: Is this part of the post verdict correspondence?

MR. BELNAP: It is not. This is between the attorney and the insured.

THE COURT: Sustained.

MR. CHRISTENSEN: Your Honor, I object to him continuing to ask questions about documents he knows we don't have.

MR. BELNAP: Your Honor --

THE COURT: Just proceed.

Q (BY MR. BELNAP) In the Emery matter, Mr. Arnold --

A Okay.

Q -- did the attorneys for the plaintiff and the defendant stipulate after the verdict came in that there would not be the necessity of filing a bond, and that execution on the judgment would be stayed?

A Yes.

Q And was that case ultimately resolved?

A Yes, it was.

Q In each of these cases, Mr. Arnold, did State Farm step up and resolve each of these cases after the [182] verdict was brought in, in an amount in excess of the policy limits?

A Yes, in every case, above the policy limits.

Q And Mr. Arnold, if, in any of these cases, if the insured ever lost any assets or property as a result of the excess verdicts?

A In my review of the file, none lost any assets or any property.

MR. CHRISTENSEN: Again, Your Honor, I object to that. We haven't seen the file, and I move that be stricken.

MR. BELNAP: Well, Your Honor, that would be a matter of public record if there's been any execution in these files. We've notified them of the names of these cases and the courts that they were filed in.

THE COURT: Well, I'm not going to strike it. I'll overrule it.

MR. BELNAP: Your Honor, I'd like to get wrapped up, here, if I could just have a minute to check my notes.

THE COURT: You may. Want to stretch? Let's resume our seats.

Q (BY MR. BELNAP) I just want to wrap up really quickly, Mr. Arnold. Can you go back to the Brumley versus Murphy case.

[183] A Okay.

Q What date -- Let me just, for the record, indicate that the name of that case is Brumley versus Murphy, Third District, civil number 907114. What date was the trial in that case?

A It was three days, August 15th, 16th, and 19th.

Q And that case was cross-appealed, in other words both sides appealed; is that correct?

A That's correct.

Q And what date was that case resolved?

A My notes indicate January 6th. The draft was issued sometime around then, I could tell you that if you needed it.

Q No, that's fine. The second case 1992. January 6th, 1992?

A That's correct, sorry.

Q The second case I want to ask you about is the Hamblin versus Hall.

A Okay.

Q Second District, Civil Number 910901283. When did the trial of that case take place?

A The trial start date was December 13th, 1993. I don't know how long the trial was, though.

Q And when was that case resolved?

[184] A That was resolved on February 14th, 1994.

Q And was that approximately a month after the judgment was entered?

A Approximately, yes.

Q The next case I want to ask you about is Lucas versus Emery.

A Okay.

Q Third District, Civil Number 920900646. When was that case tried?

A The beginning of the trial was November 9th, 1993.

Q And was there an order staying execution on the judgment entered in February of 1994?

A Yes, there was.

Q And when was the case resolved?

A It was resolved February 17th, 1994.

Q The next one I want to ask you about is Tialavia versus Soter.

A Okay.

Q Civil Number 890907006 PI, Third District. When was that case tried?

A October 12th, 1992.

Q And when was that case resolved?

A It was resolved November 16th, 1993.

Q 1992?

[185] A Yeah, that's -- I'm sorry, that's correct.

Q So within approximately a month?

A Yeah, four days over a month, that's correct.

Q Todd versus Kasteler, Civil Number 919092173. When was that case tried?

A February 7th, 1992.

Q And when was that case resolved?

A It was resolved February 25th, 1992.

Q Now, of those cases, Mr. Arnold, did all of those cases involve, except one--if you put aside the Campbell case that we haven't talked about in that list--of the cases that we've just gone through, did all of those cases involve the law firm of Richard Spratley and Associates?

A All of these cases?

Q Except one.

A Except one, that's correct.

MR. BELNAP: That's all the questions I have. Thank you.

* * *

CROSS EXAMINATION BY MR. CHRISTENSEN:

Q Yes. Please explain to the jury who Richard Spratley and Associates it?

A Richard Spratley and Associates is a law firm [186] that handles cases for State Farm. We call them claim litigation counsel. It's a law firm that State Farm has established to handle some of our litigation matters.

Q So all they do is State Farm cases?

A Yes, they do State Farm fire and auto cases, that's correct.

Q Now, Mr. Arnold, your deposition was taken on April 16th, 1996, a few weeks ago, right?

A Well, not a few weeks. Three and a half months ago.

Q Well, whatever. Not too long ago. Do you recall that?

A Yes, I do.

Q Do you recall that you were represented at that deposition by a woman attorney from California, a Mrs. Eggly or Ms. Eggly?

A Yes, I was represented by Miss Eggly, that's correct.

Q Do you recall that Ms. Eggly represented on the record that, "Michael Arnold's role from our perspective in the trial, he will testify about his search regarding of excess verdicts, collection of PP&Rs from Utah, and claims practices as a divisional for central and southern Utah."

That was represented when we started your [187] deposition, wasn't it?

MR. BELNAP: Your Honor, I'm going to object to this line of questions. It's a matter that's been brought up to the court and argued that, and that you've ruled on, and it's irrelevant.

MR. CHRISTENSEN: I think I'm entitled to have the jury know why we're not as prepared on some of these issues as we might be.

MR. BELNAP: That gets into the whole area that we argued before the court, we had disclosed these exhibits, there was a change in name. I mean what's the point?

THE COURT: Sustained. Let's not go into it.

Q (BY MR. CHRISTENSEN) Now, in that deposition we got off to a little bit of a rocky start, about the second question I asked you is your address, and you wouldn't tell me, would you?

A Well, no, that's not correct. You asked me my address, and I told you my residence was in Draper, Utah. And I gave you my business address. And the reason I did that was because I know that this deposition is going to be circulated around the United States, and I didn't think it was fair to have my family subjected to any contact, or have my address all over the United States with regard to this case.

[188] Q You told me your address was private, didn't you?

A Did I say that?

Q Well, something to that effect. You wouldn't give it to me.

A Could I see the deposition? I could tell you exactly what I said.

Q Well, you wouldn't give me your address, and I said, "Well, isn't it in the phone book?" And you said you didn't know, didn't you?

A That's exactly correct. I said I didn't know. My wife might know, but I just didn't know.

Q Do you live at 628 East 9620 South in Sandy?

A No, I don't.

Q Is your address in the phone book?

A I don't know. I haven't looked since our deposition.

Q Do you know if your address is in the phone book?

A That's what I told you now, and that's what I'm telling you now, I simply don't know.

MR. BELNAP: Your Honor, I'm going to object to this question and this line as irrelevant.

MR. CHRISTENSEN: I think it reflects on the candor of this witness.

[189] MR. BELNAP: How does the address in the phone book or whether he's concerned about this being spread on the public record, when no other witness has been asked his address in this case as they've been identified, Your Honor?

MR. CHRISTENSEN: That's not true. But this is a witness who claims to know everything from the details of class actions in Illinois to about every other subject, to Mr. Campbell's insurance file from the eighties, and he doesn't know his address. And I think I'm entitled to bring that out.

THE COURT: Overruled, but let's move on to another area.

MR. CHRISTENSEN: I'm ready to move.

MR. BELNAP: To what address?

THE WITNESS: I could give you my address if you'd like.

Q (BY MR. CHRISTENSEN) Sure, why don't we get it after all this trouble. What is it?

A It's 12823 South Whisper Creek Lane in Draper.

Q Now, Mr. Arnold, you and a number of other State Farm witnesses have testified that the ultimate determination of the value of a claim is what the jury says it's worth, right?

[190] A What I've testified to is the value of a claim is determined by a jury ultimately on a specific case. But to establish range of values, which is how we evaluate cases,

we would look at many jury verdicts to establish a value and a range. That's been my testimony.

Q Now, let me suggest something to you, Mr. Arnold. It's ten minutes to 2:00, we've got quite a bit of ground to cover. If you'll listen carefully to my questions and answer those, this will move along much more expeditiously.

Haven't you testified that what a jury awards is the ultimate tell-all of the value of the case?

A Well, if you're referring to a specific comment in my deposition, I'd like to see it. Because I've reviewed my deposition and I know what I said, and it's just what I've told the jury.

Q All right, I'll show you on page 44.

A Okay, great.

Q Didn't you say, on line 4, "Ultimately that's the tell-all of the value of a case"?

And the question before is what you think a jury would probably award.

A Could I look at this for a second?

Q Sure.

[191] A Thank you. Yes, that response is correct. You are correct, that's right.

Q Well, and we've heard, I think, Mr. Moskalski testified that's the litmus test for value, is what a jury awards. Do you agree or disagree with that?

A Well, like I said, what a jury awards in a particular case, I guess, is the ultimate value of that case. But to establish a range of values, we would review multiple jury verdicts.

Q But in a particular case, what the jury awards, State Farm says that's the value. In fact, as State Farm likes to talk about win-loss ratios, and say the jury said this was the value of this case. Is that fair?

A I'm sorry, could you --

Q Let me ask it better.

A Okay.

Q You admit that when the jury says this is what a case is worth, that's the value for that case.

A That's -- Well, with regard to that particular case, I would agree with that, because the jury has spoken on that case. You know, a jury in a different case might award a different amount of money on that same particular set of facts, and, in fact, that same case.

[192] Q I'm talking about when it's on this case, and the jury has set the value, that's the value, right?

A That's the value established by the jury.

Q Okay. And in your deposition you define low balling as offering less than you thought the case was worth as fair and reasonable value. Isn't that true?

A I'm sorry, could you read that again to me? Is that a quote out of my deposition?

* * *

Q (BY MR. CHRISTENSEN) Page 64, line 15. First of all, I asked you on 14, "How do you define low balling?" Okay, would you read your answer, please?

A Answer. "My definition of low balling would [193] be offering less than I thought, if I was making the offer, offering less than I thought the case was worth, or the group thought the case was worth as a fair and reasonable value."

Q Okay. And you agree that's an improper practice.

A I agree that this is an improper practice?

Q Yes, low balling.

A Oh, okay. I thought you meant my definition of low balling.

Q As you define low balling, it's an improper practice.

A Well, I just gave my definition of low balling. That's not something we do.

Q You admit that's improper to low ball?

A Well, to pay less than the fair value of a claim as we would establish the value, yeah, that's correct.

Q Okay. And you say State Farm doesn't ever do that.

A Low ball? Not to my knowledge. Certainly not intentionally.

* * *

[194] * * *

Q (BY MR. CHRISTENSEN) You've mentioned excess verdict cases that you found when you made your search for excess verdict cases in Utah. You and Mr. Belnap just discussed those, right?

A Yes, we discussed those excess cases, that's true.

Q Okay. I want to start with the Lucas case. Do you want to write that up for us?

MR. HUMPHERYS: L-U-C-A-S?

MR. CHRISTENSEN: L-U-C-A-S. Okay.

Q (BY MR. CHRISTENSEN) We have been provided some limited documents from that file, some we got last night.

MR. BELNAP: How many more times do you want to indicate that, when that was what the court directed us to do, counsel?

Q (BY MR. CHRISTENSEN) All right, you'll agree with me, will you not, that the judgment was -- I'm going to show you the judgment.

A Okay.

Q It was -- Before you write this up there, Mr. Humpherys, we're going to estimate it. $175,319, plus interest of $3,178. Should we round that off to [195] about 178-five? Does that look close?

A That sounds fair.

Q Put down 178-five.

MR. HUMPHERYS: $178,500?

MR. CHRISTENSEN: Uh-huh.

Q (BY MR. CHRISTENSEN) That's rounded off. And by State Farm's own definition, that's the value of this claim, isn't it? The jury has figured it out.

A That's what the jury said the value of this particular claim was, that's correct.

Q Okay. And now we do have some post verdict correspondence, and I'm going to show you a letter from the Richard Spratley and Associates firm to plaintiff's counsel, offering $105,000. Would you agree with me on that?

A Yes, that's correct. $105,000 was offered, this is after the verdict.

Q After the jury said the case is worth 178-five. And if we look at the settlement agreement, State Farm paid $130,000, right?

A The ultimate settlement on that case was $130,000, that's correct.

Q So State Farm saved about $50,000, a little less than $50,000.

A Well, I wouldn't agree that we saved $50,000. [196] I think what's important to note is the demand before trial in this case was $60,000.

MR. CHRISTENSEN: Your Honor, this witness has been instructed to stay out of things where we haven't had the documents produced.

THE WITNESS: You have this.

MR. CHRISTENSEN: I move that be stricken.

THE COURT: The motion is granted.

Q (BY MR. CHRISTENSEN) All right, let's move to the Todd versus Kasteler case. Just put down Todd, T-O-D-D.

THE WITNESS: Could I respond to the last case before we leave it, quickly?

MR. CHRISTENSEN: No. We're dealing with an area where we've got some court orders to comply with.

Q (BY MR. CHRISTENSEN) The judgment in the Todd case was $156,444.85, right?

A That's correct.

Q Plus, together with interest thereon, can we round -- There's interest on the specials of thirty-two, but should we round that off to, say, 160?

A Roughly, that's close. I notice you're rounding up, though.

Q Well, when you add interest it goes up, doesn't it?

[197] A Yeah, but I don't know it's that much. I'm not that good with math.

Q Well, I'm not either. At 12 percent interest over a period of a year or two, whatever, on $32,000 is probably going to be at least that, isn't it?

A I guess. I don't know exactly. I'd probably need a calculator to even get close.

Q All right. And I've now got a letter here from Spratley and Associates to plaintiff's attorney after the verdict offering to pay $100,000.

A Correct, that was the initial offer, that's correct.

Q All right. And that wasn't accepted, was it?

A It was not accepted, no.

Q I have another letter here reflecting that another offer was made of 120 by State Farm.

A That's correct, and that was countered with a demand of $145,000.

Q Okay. And State Farm paid $145,000 on that one, right?

A Well, the counter demand from the plaintiff's attorney was 145, and they compromised, and we compromised, and settled it for that. They must have been comfortable with the settlement or else they wouldn't have taken it. Because this is an experienced [198] trial attorney.

Q Or he didn't want to wait for two or three more years for he and his client to get paid. That's a lot of it, isn't it?

A I don't agree with that at all. I think that he felt that that was a fair settlement, otherwise he wouldn't have taken it.

Q You tell people every day, "If you don't take our offer it's going to be delayed."

A That's false.

Q That is used as leverage over and over by insurance companies in negotiations, isn't it?

A That's absolutely false. We do not tell people, ever, that if they don't take our offer it's going to be years, or delay, or delay. We just simply don't do that. That's a misrepresentation of what we do.

Q In negotiating after a judgment, you say, "If you don't take our offer we're going to appeal, and the appeal will take a couple of years," don't you?

A Well, the plaintiff attorney needs to evaluate whether they think we have good appellate ground. If they think we do, then they need to decide. Maybe they're not going to get that $156,444 in the next case. So that's a decision they make when they go into [199] the negotiations. I mean I don't think they would take $145,000 if they didn't think that was a fair and reasonable settlement for the case.

Q All right, let's go to the next one, let's talk about the Soter case. S-O-T-E-R. All right, we've got a judgment for $151,323.

A That's correct.

Q Will you be more comfortable if I round this one down to 151?

A No, we can go up. That's fine.

Q Put it at 151. And State Farm paid 108,600, right?

A Yeah, the ultimate settlement of the case was $108,600, correct. The demand on this case was significantly less than the settlement.

Q All right.

A Just like in all these cases.

Q That's usually true in excess exposure cases, isn't it? There's usually a chance to settle within the policy limits before trial, isn't there?

A Yeah, but these demands are even below the policy limits.

Q Well, I don't want you to get into those, because we haven't gotten to see your files.

A I prepared these, and I can tell you these [200] numbers are accurate.

Q I'd still like to see your files.

MR. BELNAP: Your Honor, the record ought to reflect that if they had any question about this, they've had the opportunity to call all of these plaintiff's lawyers, too, to verify it.

Q (BY MR. CHRISTENSEN) All right, let's move to the Murphy case. Brumley versus Murphy. That case we had a, and we've got some interest to add here, $75,000 verdict plus costs of about $2,500, and interest of about $2,500. Would you agree with that?

A Yeah, roughly that's right, correct.

Q Can we round that to $80,000, then?

A That sounds fine.

Q And after trial, State Farm offered sixty-five. Is that the way you read that? This is the plaintiff's attorney responding, apparently, to an offer of sixty-five?

A And he's saying, if I'm reading him correctly, we offer, let's see, he's indicating he'll accept someplace between sixty-five and $75,000.

Q And then the case settled ultimately for $70,500, right?

A Yeah, which is exactly where he placed the evaluation for settlement.

[201] MR. HUMPHERYS: $70,500?

Q (BY MR. CHRISTENSEN) $75,500. Now, the Hamilton versus -- Just put that as the Hamilton case, it's Hamilton versus Hall.

A Hamblin, I think.

Q Is it Hamblin?

A Yeah, H-A-M-B-L-I-N.

Q And you know, I don't have the judgment in this, so maybe we can't do -- Let's see if I've got it here. All I have here, and maybe we can move on, is that was a case Mr. Short had under his jurisdiction. I see, on page 108 of his deposition, he said that it was compromised, apparently a small amount, the interest and costs were not paid. Let me show you that.

I asked him, "So you paid the full value of the judgment, then?"

And he said, "We didn't pay any interest or costs."

Question. "Was that a compromised item?"

Answer. "Yes."

Do you just want to put "compromised" on that?

MR. BELNAP: Doesn't the document reflect that was settled for $75,000?

MR. CHRISTENSEN: What I don't have is the [202] judgment.

THE WITNESS: My notes indicate it was $78,000.

Q (BY MR. CHRISTENSEN) And it was settled for seventy-five?

A That's correct.

Q That would be about what Mr. Short said, that interest and costs weren't paid?

A That sounds about right.

Q Okay. Now, those are the five cases, other than Campbell, that you've identified as excess verdicts where a file still exists. The other one, the seventh case, the file's no longer around.

A The other case is a case called Miller versus McMullin, and that file was tried in 1981, fifteen years ago, and our State Farm file does no longer exist on that, that's correct.

Q Okay. So we don't know exactly what happened there. You are aware, are you not --

A I do, from speaking with Mr. Ivie, and I could tell you his father's the one who handled the case, so I could give you a general idea what happened in that case.

Q His father's dead, right?

A Yeah, but he's familiar with the case.

[203] Q But we don't have the file, so we don't have these kind of specifics.

A He told me what, that the case settled and the insured was protected.

Q Okay. Was that case compromised too, as far as you know? Or do you know?

A I don't recall what the amount of the judgment was in that case, and Mr. Ivie didn't have that information, either. He just said that it was settled, there was no movement towards the insured's assets, and the insured never lost an asset, and we paid and resolved the case, and got the insured released and protected them.

Q I think you acknowledged in your deposition you didn't have any information about the emotional trauma or the effects that these excess verdicts had had on the insureds, other than you knew they'd been paid.

A Is that exactly what I said?

Q I think that's what you said.

A Could I see it?

Q Are you going to make me look it up?

A Well, that's not exactly what I think I said. And I just wanted --

Q Didn't you acknowledge that you didn't really inquire as to what effect these judgments had had on the [204] people?

A I recall in my deposition --

MR. BELNAP: Your Honor, let me just say we tried to introduce letters that were sent to these people saying they would not be at risk, and we were precluded, so I don't think this is a fair area for cross.

Q (BY MR. CHRISTENSEN) Let me ask you this. State Farm doesn't keep any record of that sort of thing, do they?

A Keep any record of what? I'm not clear on your question.

Q I'll move on. They don't keep records of excess verdicts; is that correct?

A I testified in direct examination with Mr. Belnap that we don't keep those. We've only had seven out of 3,700 lawsuits. The number is so small, we know when these happen, it's a significant event, we view it very seriously when it appears, and we respond and handle it.

Q Now, as far as we can tell State Farm has not paid the verdict, what the jury decided the case was worth, on a single one of these, have they?

A Each one of those was compromised.

Q Exactly.

[205] A At the willingness of the plaintiff attorney, their client, they thought it was a fair settlement, we thought it was a fair settlement. I mean the plaintiff attorney has to weigh whether they think that the appellate issues in any of these cases are worthwhile. If they think they're worthwhile, that would be the reason they would compromise.

Q Now, you have testified how confident you are of the accuracy of your search. I'm going to sh w you State Farm's -- The jury's seen this before, we'll see it once more. State Farm, under oath, represented, and Mr. Paul Short signed these --

A When was this? What's the date?

Q The date on those, and I've got the sheet on that, the date on those is January 21, '94.

A Okay.

Q And in this case, the answer to interrogatory was, "Defendant has inquired of claims management personnel, and they cannot recall any other excess verdicts during the eighties other than the Campbell case." And the question asked for all of the excess verdicts since 1980. Do you see that?

A Yes, I see the question.

Q So the question called for excess verdicts from 1980 up to the date of the answer, which would have [206] been January, 1994.

A Yes, interrogatory, that would be right.

Q And Mr. Paul Short signed this. When I looked at these documents last night, I found something quite interesting. One of these excess verdicts, it was the Hamblin versus Hall case, was under Mr. Short's jurisdiction, wasn't it?

A He got a carbon copy of that letter, that's correct. I don't know if he was the handler or the superintendent responsible for the file, I don't know that.

Q A judgment was around December of '93, wasn't it? I don't have the judgment in this particular file, but I see a letter dated December 27th, '93, saying "This letter will confirm the granting of an extension to respond to the judgment."

A It was in December, middle of December of '93. So if that helps --

Q So Mr. Short had an excess verdict in December of '93, and a month later he is signing answers to interrogatories indicating the only excess verdict that State Farm management can recall is the Campbell case.

MR. BELNAP: Your Honor, that misstates the answer.

[207] THE COURT: Put it on, let the jury read the answer.

Q (BY MR. CHRISTENSEN) Well, they need to read the question, too. A fair answer to that question would have revealed the excess verdict in Hamblin versus Hall that happened a month before those were signed by Mr. Short, wouldn't it?

A I don't know that to be true, and I don't necessarily agree with that. Number one, I don't know that Mr. Short was responsible for that file or had knowledge of it. I just simply don't know that.

Number two, the answer to the interrogatory, in an attempt to reasonably respond to this interrogatory, this search took hours and hours. And to say that we weren't up front about that, an interrogatory is an ongoing process, as you know, and we gave you all those seven excess verdicts.

Q A few months ago after a court hearing?

A It was more than a few months ago. I think it was March when I testified in the evidentiary hearing, early March, we talked about this specifically, so that's four and a half months.

Q Your testimony, you said you'd never seen State Farm use any methods to save money on claims. Is that still your testimony?

[208] A Was that a question specifically directly that you asked me? I don't recall. I apologize for not knowing all of the answers. My deposition is 125 pages, and I assume you don't remember all the questions, either.

Q Well, is it true that you have not seen State Farm use any methods to save money on claims?

A We have a business. I mean we always are conscious of our costs --

Q Please answer my question, sir.

A I'm trying to answer it.

Q Would it be quicker if we just read this?

A If you have it, that would be great.

Q Page 104. Line 22. Question. "What methods, if any, have you seen State Farm use to save money on claims?"

Your answer was, "Well, I don't think I've seen any. I don't think I have seen any. In fact, I know I haven't seen any method where we try to save money on claims. We have, you know, we obviously try to manage our expenses, like allocated adjustment expense, but we don't try to save money by underpaying claims and try to save indemnity dollars."

A That's what I was trying to explain to the jury.

[209] Q And it's your sworn testimony that you've never been asked to pay, or to control average paid costs in your whole career?

A Well, my testimony is I have, I think we've produced three years of my PP&Rs, none of those PP&Rs do I have any average paid cost goals, and I don't believe I had any in the past besides those. I think that's my testimony.

Q But we haven't seen them. The total rest of your career we haven't seen your PP&Rs.

A Well, yeah, you don't have them, I don't have them.

Q Didn't you say -- And let me refer you to line 25, page 67, you said, "Correct."

A Line 25 -- I'm sorry, page 25, what?

Q Page 67, line 25.

A Okay.

Q See at the bottom?

A Yes, I do.

Q Your response, and if we need to read all the questions we will, but I'm trying to hurry.

A No, that's great.

Q Correct, I have never been asked to control average paid cost.

A That's what I said. You know, average paid [210] cost is an item that we're aware of, but we don't, we can't affect average paid cost, because we don't know what the value of a claim's going to be when it comes in.

Q I'm going to show you --

A Could I finish that? Because I wanted to add to this.

Q I'm not sure there's a question pending. I thought you started to speak while I was getting the next document.

A I'm sorry, I thought there was a question about average paid cost.

Q I'm going to show you one page from your, one of the PP&Rs you've given us, and I'm not sure of the number. Oh, here it is, it's number 9601945.

A That's not a PP&R that you put up on the board.

Q This is some kind of an evaluation done by your superior?

A I believe so, yeah. But it's not a PP&R.

Q Is that a truthful statement I have underlined?

A Yes, it is. Absolutely. I'm committed to State Farm.

Q You would admit that profit goals in claims [211] people are wrong, wouldn't you?

A Profit goals? I don't quite understand what you mean by profit goals.

Q Having a goal for profit in a claims operation, or for claims management?

A I've never seen a goal for profit on a claim PP&R, that I'm aware of.

Q Or a claims manager.

A Claims manager? I'm not a claims manager, so I wouldn't have seen claim manager PP&Rs.

Q I'm going to suggest to you this is your boss'.

MR. BELNAP: Is this of a division manager?

MR. CHRISTENSEN: This is of a Utah division manager. Isn't he your boss?

THE WITNESS: The Utah division manager, yeah, I don't know whether that's my boss currently, but the Utah division manager would be somebody I'd report to now, that's correct.

Q (BY MR. CHRISTENSEN) And you see he's got a profit goal for Utah auto insurance?

A Yeah, but you're totally misstating that PP&R. The Utah division manager is in charge of underwriting, and having a profit goal for underwriting is not inappropriate.

[212] Q He has no claims management responsibility?

A He has no claims management responsibility other than I report to him, Mr. Kingman reports to him, but he doesn't have any authority over the handling of those claim files. So that's a goal pertaining to underwriting, not to claims. So that misrepresents that document.

Q He's not involved in claims management, even though he manages you and all the other claims people in Utah.

A I just testified to that. What that goal is about, is underwriting.

Q Now, Mr. Arnold, I want to get to another area. It's been said, I wonder if you would agree with this, that if somebody has a truly charitable motive, that they do it quietly. Maybe even anonymously. Would you agree with that?

A I would say that an act of charity or giving doesn't necessarily have to be published. I think that that goes without saying, at least in my opinion, in certain circumstances.

Q In fact, if it's published and touted, it's more like advertising than charity, isn't it?

A Well, I don't agree with that at all. Because you do an act of charity or you give, doesn't [213] mean that if you're

acknowledged for doing that, that that's wrong. We don't -- Those things I talked about earlier, those aren't in the newspaper. Those aren't on TV. Those aren't on the news. Those are internal documents that we talked about.

Q The State Farm "Good Neighbors for Good Schools" isn't on the radio and at every Jazz game that you go to?

A I don't know whether it's on the radio or not. It might be. But how many other items did we talk about? Eight or ten?

Q How about the good neighbors?

A The good neighbors what?

Q For good schools.

A I don't know if we advertise with that or not. I wouldn't know that. I don't believe I've ever heard anything on the radio about it. Maybe it is.

Q Do you go to the Jazz games?

A Very few. Once in a while I've gone.

Q In fact, State Farm pays the Jazz to allow them to talk about "Good Neighbors for Good Schools" at the games, don't they?

A I don't know what the relationship is between us and the Jazz. What I do know is our agents, out of their own pocket, donate $100 for every fifty points the [214] Jazz score, State Farm matches it $500 for every game the Jazz win. But I don't know what the contractual agreement is regarding that.

Q In fact, this is all part of building the "Good Neighbor" image, isn't it?

A That's not true at all. I've testified that State Farm is involved in the community. The reason we're involved in the community is we're committed to the community we work in. To suggest that when we get some acknowledgement at the Jazz game because we've done some good things is wrong, I'm offended by that.

Q Well, you pay to get that acknowledgement at the Jazz games, don't you?

A I just told you, I don't know that we do. I have no idea what the contractual obligation is. I think it's not fair of you to attack us for doing good things.

Q You're the one here touting your good deeds. I'm trying to explore what may motivate it. Isn't it true -- and I've read a number of your president's forecasts -- isn't it true that building, promoting the good neighbor image is State Farm's major marketing tool?

A Our marketing slogan is, "Like a good neighbor, State Farm is there." But because we are [215] active in the community, acknowledged for that, there's nothing wrong with that.

Q And State Farm spends millions of dollars a year to try to build that image, don't they?

A I have no idea what our advertising is. I would bet you that our community involvement is significantly more, from a dollar perspective, than what we spend on advertising when you add up the hours of our people.

Q State Farm doesn't pay for those hours, do they?

A What do you mean?

Q I thought you said you had your people volunteer.

A We do. But we do during the work day, and we let them go during work, so they're not productive when they're gone. So yeah, we do pay for it, in production. Absolutely.

Q Let me show you the financial statement filed by State Farm Auto for the year 1995.

A Okay.

Q Do you see the amount State Farm is reporting that it spent on advertising? I've highlighted it in yellow to help you out. Would you read that, please?

A It says, it's broken down, loss adjustment [216] expense, other underwriting expense.

Q That's got to be just the form, right? Because that doesn't apply to advertising.

A I think that I'm not comfortable with this form, and I think that that might not be an accurate figure. I don't know.

Q Well, it's what State Farm has reported to the state of Utah insurance department.

A But that doesn't say what those expenses are for, though.

Q It says "advertising," and the total is $40,614,928, isn't it?

A It's talking about loss adjustment expense and underwriting expenses, though. So I don't agree with that.

Q You deny that this document says, next to advertising, the total is about $40,614,000?

A What I'm telling you is I don't know this document, and I'm not prepared to say that that's what the advertising is, because I just don't know. I am telling you it's talking about two expense categories on there. So I don't know how that relates. I just don't know.

Q State Farm promotes this image to buy their products and to trust them, don't they?

[217] A We advertise, obviously as a company we want to grow. And our commitment to our policy holders is protection and peace of mind.

Q I found this interesting, I looked at this during the lunch break. Read what State Farm Company is in this brochure, right here.

A State Farm Fire and Casualty Company is what that says.

Q State Farm Fire and Casualty, Exhibit 181.

A Yes.

Q Did you know State Farm is taking the position that State Farm Fire has nothing to do with this case?

A Well, this is an auto case, State Farm Fire doesn't have anything to do with it, but State Farm Auto owns State Farm Fire.

Q Now, you've talked about programs State Farm has for helping people in inner cities?

A Yes, that was -- Yeah, the Neighborhood Housing Services, the significant program I spoke about, that's correct.

Q I assume you're aware that State Farm has had many controversies over its refusal to insure people in inner cities.

MR. BELNAP: Your Honor, I'm going to object, [218] this goes beyond the scope of direct, and beyond the issues.

MR. CHRISTENSEN: It's exactly -- He's testified how much they care about the inner cities. This is about two or three questions, and I'll move on.

THE COURT: Overruled.

Q (BY MR. CHRISTENSEN) Are you familiar with the concept of red lining?

A I didn't get a chance to answer that question. Is this going to go to that?

Q Yes. Are you familiar with the concept of red lining?

A Yes, I know what red lining refers to, sure.

Q It's where an insurance company carves up the market and takes the good risks, and won't insure other risks, isn't it?

A I don't know that it carves up the market and takes the good and the bad. I think red lining more refers to insuring certain counties and not insuring other counties. But I don't know if that means good areas or bad areas, or whatever you want to refer to them as.

Q State Farm has been involved in many controversies for its red lining of inner cities, isn't it.

[219] MR. BELNAP: Your Honor, I'm going to object, that assumes facts not in evidence that there has been red lining.

THE COURT: Overruled, he can answer to his knowledge.

THE WITNESS: No, I don't know of any controversy regarding that, none. Do you have any information on that?

Q (BY MR. CHRISTENSEN) I've certainly been told that.

A Well, I haven't, and I think you're wrong.

Q I think if I'd had a little more time I'd have a document to show you, but I don't --

A I doubt it.

Q You're aware that State Farm cancelled the hurricane coverage for thousands and thousands of people in Florida this year.

MR. BELNAP: Your Honor, I'm going to object to that, that assumes facts not in evidence, and that's a misrepresentation, Your Honor. That's a matter of insurance regulation in Florida, as the commissioner there has directed that certain parts of the market and percentages be covered, and State Farm has moved into those areas pursuant to that regulation.

MR. CHRISTENSEN: Well, it is in evidence. I [220] asked the regulator from Texas if he recalled in February of this year the Florida insurance commissioner calling State Farm a corporate bully for jerking the coverage on 62,000 homes in Florida. And he said he did remember that. So it is in evidence.

THE COURT: Well, let's establish whether this witness has any knowledge.

Q (BY MR. CHRISTENSEN) Do you know about that?

A I don't have any knowledge. All I know on Hurricane Andrew, we paid almost $5 billion in claims. So I don't think we jerked anything other than paying those claims.

Q You jerked it after Hurricane Andrew, didn't you?

A I like I say, I don't have any knowledge of that. I think that's a misrepresentation based on what Mr. Bellman said, though.

Q Do you know that State Farm paid more money than any other entity in California for political lobbying in 1994?

A I don't have any knowledge about that. Do you have any verification on that? I don't.

Q You bet.

A That may be true, but I just don't know.

Q It's a newspaper article on the top spenders [221] in California for political lobbying in '94. Do you see who's on the top of the list?

A I sure do. There's a lot of groups that lobby, though, including the trial lawyers. I don't know that lobbying is a bad thing.

Q I'm just pointing out some of the other charities that State Farm is involved in.

A What was the figure on that? I bet you the charitable contribution figure is significantly higher.

Q The figure on it is $874,347.

A Yeah, much higher. Not even close.

* * *

[226] * * *

MR. CHRISTENSEN: I'll move quickly, although I want to touch this class action area, and I'll do it as fast as I can.

Q (BY MR. CHRISTENSEN) Mr. Arnold, you're aware that I first became aware last night you were going to address this issue.

A No, I'm not aware of that. I was with Mr. Belnap recently when he left a message on Mr. Humpherys' machine about this, and it wasn't last night.

Q Well, after he called me I checked Mr. Humpherys' machine, that was left after 8:00 o'clock on July 24th, wasn't it?

MR. BELNAP: Your Honor, I'm going to object to the relevancy of this, given the time and what we're doing. We've had a hearing on this. This was brought up late in their case, and it's already been decided.

THE COURT: I'll allow him to pursue it. Overruled.

Q (BY MR. CHRISTENSEN) That was after 8:00 o'clock on the night of the July 24th, wasn't it?

A That sounds right, I believe. 23rd or 24th, [227] I'm not sure.

Q It wouldn't surprise you we didn't figure out that voice mail message was even there until last night, would it?

A I don't know. I just don't know.

Q When did you gain this detailed knowledge of these class actions?

A Well, as I testified, when Mr. Belnap was instructing me, or as he was examining me on direct examination, I had personal knowledge of these cases when I was in California. I knew details of the cases, and so I knew exactly what was going on in those cases. I verified some numbers that I had already had recently, but I'd had knowledge of these cases.

Q Are you aware, Mr. Arnold, that we've had many witnesses in this case from State Farm say they don't know anything about class actions? Were you in a legal department or something where you learned about these?

A No, I wasn't --

MR. BELNAP: Excuse me, Mr. Arnold. I'm going to object to counsel's statement, "many State Farm witnesses." I think the only people who have been asked have been the regulators.

MR. CHRISTENSEN: Mr. Moskalski was asked, [228] too.

THE COURT: Well, sustained. Just reframe the question.

Q (BY MR. CHRISTENSEN) You're aware that we presented that evidence, and since my questions were put on the board I want to make sure they're viewed in the proper light.

We were allowed, under the guidance we received from the court, we were only allowed to bring up enough of these cases to show that people like regulators, who said they were aware, may not know what's going on. That was the limited purpose that we could use those for. You understand that?

A I don't know what the purpose, I wasn't here when the court ruled --

Q We weren't allowed to bring in the attorneys that handled them and explain the details. You understand that?

A Yeah, I understand what you're telling me, sure.

Q When did you first start studying up on these cases to testify?

A Well, as I've testified, I didn't study up on these cases. I had personal knowledge of these two cases, because I worked in California. Mr. Moskalski, [229] who works in Colorado, he's never worked in California that I'm aware of, maybe he has, but I don't think he's worked there during the time frame of these cases, which is '87 to present.

Q So you didn't study it, you just knew --

A I knew the information, I said, and I called and verified it.

Q Called who?

A I called our legal department to find out, to verify what I knew about the case.

Q When did you do that?

A I did that two days ago.

Q You're aware State Farm hasn't given us any documents on class actions.

A I believe almost everything we've referred to is a matter of public record.

Q Well, it's information that we got from calling around and gave to State Farm's counsel a number of weeks ago. Do you understand that's where it came from?

A That information? I don't know where it came from.

Q You understand State Farm was to let us know if our information was inaccurate?

MR. BELNAP: Your Honor, I'm going to object [230] to that as an incorrect statement as to these cases.

THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) All right. Let me show you an article from the Los Angeles Times which says, "State Farm has agreed to settle a class action lawsuit alleging that the company cheated more than 2 million California customers by using inferior parts to repair cars."

MR. BELNAP: Your Honor, this isn't an article from the Los Angeles Times. This is some summary that Mr. Christensen has put up, and it's hearsay. If he wants to ask the witness about it under Rule 803, that's one thing. But this is hearsay, and it's double hearsay as a summary, Your Honor.

MR. CHRISTENSEN: No, this is a computer network of articles. The jury's seen this, and it's a news article like the one Mr. Crandall used.

MR. BELNAP: Your Honor, I'm going to object. It's double hearsay.

MR. CHRISTENSEN: The other concern I have, Your Honor, is it's been suggested that somehow I made up these numbers.

THE COURT: You showed that to the insurance commissioner, correct?

MR. CHRISTENSEN: Yes, I did.

[231] THE COURT: I'll allow it. Overruled.

Q (BY MR. CHRISTENSEN) These are true statements, aren't they, that it was alleged that the company had cheated more than 2 million California customers?

A I'm sorry, I was reading it, I didn't hear your question.

Q That's a true statement. That was the allegation, wasn't it?

A That was, yeah, simply the allegation, I believe. I don't know if 2 million is the right number. I don't recall. Or I don't know the exact size of the class. But I think it's about that.

Q And I would like the jury to understand what a class action is. It's where a group of people join together with common claims, right? Or do you know?

A Yeah, if the claims -- Somebody feels like they haven't been treated fairly, if they have a legal basis or a factual basis for believing that others have been treated unfairly, then they can form a class.

Now, I don't think the allegation is actually that we cheated. I don't agree with that. I think I've stated previously what the allegation was.

Q The allegation was --

A It's not "cheated," though.

[232] Q It had not been disclosed, and the parts were inferior; isn't that correct?

A The parts weren't of like kind and quality, and there was no up-front disclosure. That doesn't mean "cheated."

MR. BELNAP: I would also like to voice an objection at this time to that statement of counsel. Because there was an allegation by the plaintiff's attorney in that case the class was 2.3 million, but when the court dealt with the class it was defined as 45,000. And that's who the letters were sent to.

MR. CHRISTENSEN: Well, that may or may not be true.

THE COURT: I'll allow counsel to make that statement on the record.

Q (BY MR. CHRISTENSEN) And the court, under Rule 23 of the rules of procedure, has to certify the class. A judge has to decide that it's a proper class, don't they?

A The judge decides, yeah. He certifies the class, that's right.

Q And a class action can only be settled with the approval of the judge; isn't that true?

A I believe that's true, yes. I don't know all the legalities, but I know quite a few of them.

[233] Q And the reason that they exist in the law is, if you take this -- For example, say you have a large group of people who have not been given, say, $100 each. It would not be practical for any one of them to go to court over that, would it? You can't go to court over $100.

A That's --

Q So the law recognizes a class action to allow a group of people to join together, and now it is feasible to go to court. Is that consistent with your understanding?

A That's -- Yeah, I would say that's consistent.

Q And that's really the only feasible way under the law to deal--and I realize you don't admit these allegations are true, you deny them--but if you were to assume this sort of thing was true, it would be the only feasible way for a large group of people to deal with the problem. Isn't that true?

A Well, as a group, if any of these individuals had problems with any of these items, all they would have needed to do was come to us, and if there was correction needed we would have taken care of it.

Q Now, you've indicated -- Can I get you to write for us again, Rich, to speed this up? By the way, [234] do you know how the figure of $35 each was arrived at?

A I don't recall that. I'm not sure.

Q If we take 2 million, if we take 2,300,000 times thirty-five, that's about $80,500,000. You want to write that down? This 2 million was the number of people whose cars had been fixed in California using these after-market parts, wasn't it?

MR. BELNAP: Your Honor, I'm going to object. If he wants to rely on this, his own article talks about the fact the company does not anticipate a flurry of claims from its 2 million policy holders. And so the plaintiff's counsel was claiming that every single policy holder was a member of the class, and the court said no.

MR. CHRISTENSEN: Well, you represent that. I don't know if it's true or not.

MR. BELNAP: Well, maybe you ought to do your homework.

Q (BY MR. CHRISTENSEN) There were 2 million people, isn't that true, in California, who had had their cars fixed with these after-market parts.

A I don't believe that's what that says. The court said that there was 45,000 people affected, not 2 million. The court said that. State Farm didn't say that, and the plaintiff didn't say that. The court said [235] it. That's why there's 45,000 letters. Not 2 million. So that figure --

Q Where does the 2 million come from?

A It sounds like to me it's saying 2 million California policy holders. Maybe that's the number of -- I don't know where that comes from. I couldn't answer that.

Q Is it your testimony, under oath, that if I were to go search the court records in California, that I would find that there were not 2 million people whose cars were fixed using after-market parts from '87 until '95 in California?

A What I'm telling you is I don't know how many people had their cars fixed, number one, and number two, not all those repair estimates would have had after-market parts on

them. That's an assumption you're making. But the court said 45,000, not anybody else. The court said 45,000, not 2 million.

Q And of that group, only 2,000, roughly, did anything.

A 2,215, that's how many responded to the 45,000 letters that went out.

Q For most people, going through the hassle isn't worth it for 35 bucks, is it?

A I wouldn't agree with that at all. The claim [236] form is a very simple claim form, the person doesn't have to make a call, all they have to do is fill out the claim form, mail it back in and get the $35. There's no hassle. I think if somebody felt like they had inferior parts, they would have sent it back in. The bottom line is, hardly anybody felt like they had inferior ports.

Q How much did State Farm pay in California? What's your testimony, $87,000?

A I think I transposed those two. It was $77,525.

Q Do you want to write that up?

MR. HUMPHERYS: 77 thousand --

THE WITNESS: 525.

Q (BY MR. CHRISTENSEN) The truth is, State Farm knows that only a very small percentage of the people that aren't treated fairly will make a claim, don't they?

A That's not true. They got letters. You're assuming that they didn't know about it. It was published in the newspaper. They got letters, they knew about it.

Q This is enormously profitable for State Farm, isn't it?

A That's absolutely false. This is -- Using like kind and quality parts or quality replacement [237] parts, there's nothing wrong with that. That's simply good business. And that's allowed by all the departments of insurance, all the regulations, all the laws of each of the states. That's standard industry practice. There's nothing wrong with that.

Q State Farm saved millions and millions, and gave back $77,000, didn't they?

A I just testified, we didn't save any money. What we did was used what made sense. If somebody has a ten-year-old car, is there anything wrong with putting a ten-year-old fender on it that doesn't have any damage on it? It doesn't. I mean a ten-year-old car with a new fender, that doesn't make any sense.

Q State Farm didn't agree to this settlement out of the goodness of their hearts did they?

A As you know, settlements is not an admission there's a problem. The reason I believe this case was compromised is that there was, I don't know if I could say the figures, millions of dollars worth of attorneys fees, so the costs on these cases from the plaintiff's side that we're expected to pay are enormous. They're the winners in this, not anybody else.

Q State Farm was required, under the terms of this settlement, to give people a guarantee, weren't they?

[238] A I don't -- I'm not sure that that was the case. No, we had already been giving a guarantee, long before this case was ever settled.

Q You deny that?

A We've been giving guarantees on after-market and salvage parts for years.

Q I thought you knew all about this case.

A I do, but what I'm telling you is we've been giving guarantees long before this case was ever settled.

Q I'm looking at the settle agreement, it says, "hereby agrees promptly after the implementation date, to make the guarantees set forth in paragraph 1 of Exhibit A hereto available to all State Farm policy holders." That sounds like a guarantee that's going to begin, it says "agrees promptly, after the implementation," to do that.

MR. BELNAP: Your Honor, and I would like to reflect an objection. The judge, after looking at all the evidence,

ordered 1,000 certificates be sent out to be redeemed within a certain time period. If anybody was not wanting the $35, they could take a guarantee.

THE WITNESS: I'm sorry, I maybe misunderstood. Is that what you were referring to, is the guarantee? I thought you were talking about [239] referring to guaranteeing the parts. And that's what I'm saying we've been doing for years. If you're talking about that certificate, that was part of the settlement for those people that didn't want the $35. I may have misunderstood your question.

Q (BY MR. CHRISTENSEN) All right, let me move quickly to the Illinois case. This is a letter from the Los Angeles -- That's the wrong one. This is from the Chicago Tribune. This says, "The company said up to 80,000 policy holders could be covered under the terms of the settlement," and you said 80,000 letters went out?

A 80,000 -- Yes, initially 80,000 letters went out, I believe.

Q And that's because 80,000 people in Illinois had their cars repaired with these parts that were being called into question; isn't that true?

A Yeah. I don't know how the number 80,000 was established, but I believe 80,000 is the number of people that may have been affected. But I don't know if it was true that they were or not. I don't know.

Q I thought you knew all about this case.

A Well, I didn't say I knew everything about this case. What I said was I had knowledge of this when I worked in California. And I'd have knowledge of it, [240] and that's what I'm here to talk about.

Q And in this case settlement was $40, right?

A That's correct. And the Krusinski case was $40 per claim. Or the person could redeem a certificate, as we stated earlier, to have the vehicle redone.

Q All right. If we take $80,000 times 40, that's -- Let me try this again.

MR. HANNI: $3,200,000.

MR. CHRISTENSEN: $3,200,000, thank you.

MR. BELNAP: Your Honor, I'm going to object to that, because it misstates the actual fact of the process which was determined by the court in that case, for anybody that was dissatisfied to send in a claim, or that they could obtain a certificate. And so to put up there that you're taking that leap is a misstatement of actual record.

Q (BY MR. CHRISTENSEN) And how much did you say State Farm had to give back to people?

THE COURT: I'll overrule the objection, but it's stated before the jury --

MR. CHRISTENSEN: It's represented by counsel. And as I say, we're at the end of the trial.

Q (BY MR. CHRISTENSEN) How much did State Farm give back in Illinois to these people?

[241] A The claim payments -- There was only 1,301 that filed a claim out of the 80,000 letters. And the total payment was $87,000, I think, when I originally said I had crossed the two up.

Q $87,000. And $40 a car really doesn't represent how much State Farm saves, does it? They save a lot more than that, don't they?

A I've testified that -- There's nothing wrong with using after-market parts. I don't know how the $40 figure is computed. And to say that we do this to cheat people is just ridiculous. We don't cheat people.

Q But that was the allegation in Illinois, wasn't it?

A I don't think you saw the word "cheat" in there, did you? I don't recall seeing it.

Q It was alleged that the parts were of inferior quality, and the people whose cars were fixed weren't told, wasn't it?

A That was the allegation, correct.

Q Most people who aren't treated fairly don't do anything about it, do they?

A I don't agree with that. I think if somebody thought that they had inferior parts in their car, or felt like they were treated unfairly, would have made a claim, and that that's why you didn't see many claims.

[242] * * *

Q Now, you said there was no findings in Illinois or California that things, that State Farm had acted unfairly. That's normal in a settlement. You've got a clause that says nobody admits anything, right?

A I don't know that that's -- I mean -- Ask me the question again. I guess I'm confused.

Q That's normal on a settlement?

A What's that?

Q To have in the settlement document that nobody admits anything. I mean that's not literally. It usually says, "Nothing herein shall be construed as an admission of liability on the part of any party hereto," something like that, right?

A I guess it could be a part of a settlement. It just depends on the document. I'm sure the [243] settlement documents are drawn up for each individual case, but I don't know. I think -- You know, realize there's a tremendous cost to these cases. The attorney fees in the Krusinski case were tremendous. The attorneys fees in the Krinsk case were twice as much, millions. And those were costs that we ended up incurring. That's the reason I think there's a settlement. Not because --

Q Sir, there's no question pending. I would appreciate if you'd wait for a question. I'd move the witness' volunteer statement be stricken.

MR. BELNAP: I think he asked for it as bringing up the reason for settlement.

THE COURT: I'll allow it to stand. Overruled.

Q (BY MR. CHRISTENSEN) Now, you have said--and I'm surprised you'd say this--that the excess verdicts are available in the court records, and anybody that wants to find out what excess verdicts have been against State Farm policy holders just has to go down and look. That's not true, is it?

A I think that misrepresents what I said. I think Mr. Belnap's question to me was those cases that we have provided you summaries with three and a half months ago were a matter of public record. I didn't say [244] the cases, all excess verdicts in any state were a matter of public record. If you didn't know which cases they were. That's what you need to know.

Q Well, the courts don't write anywhere "excess verdict," do they?

A That's what I just said. I just clarified. You misrepresented my testimony.

Q And State Farm isn't even a party in these cases, are they?

A No, my testimony was that those cases, when we gave you the names on them, you could go look them up. Not that you could go look up every case and figure out if it was an excess verdict. That's not my testimony.

Q Okay, you can't do that, can you?

A Well, no, you can't unless you know the name of the case or the case number.

Q Well, even if you did that, the court file usually doesn't say how much the insurance was.

A That would be true, too. I don't think it would be a matter of record as far as how much the policy was for.

MR. CHRISTENSEN: All right, thank you.

* * *

[245] * * *

REDIRECT EXAMINATION BY MR. BELNAP:

Q Mr. Arnold, with respect to these excess cases, I want to refer you to the Brumley case. Did each side file an appeal on that case?

A Yes, both sides filed an appeal. Both an appeal, and then the other side filed a cross appeal, that's correct.

Q Being involved in litigation, what does that indicate to you about whether there were some bona fide questions in people's mind about the validity of that verdict in that particular case?

A Well, generally an appeal means that the party doesn't agree with the verdict, or they felt like something came into a trial that was unfair or prejudicial, and that's what probably happened in this case.

Q I want to show you another case, this is the Todd versus Kasteler case that was written up on a piece [246] of paper talking about settling that for a lesser sum, and I want to refer you to the plaintiff's attorney's letter to State Farm, indicating, "I have received from my client an oral agreement to a stipulation to a new trial, and I'm currently in the process of obtaining written authority from her on this stipulation."

Does that indicate that there's some question in their mind about the validity of that particular verdict?

MR. CHRISTENSEN: Your Honor, I'm not sure what's beyond leading, but whatever it is, I object on that basis.

MR. BELNAP: Let me rephrase it. I'm trying to hurry, Judge, I'm sorry.

THE COURT: Just move on.

Q (BY MR. BELNAP) What does that indicate to you, Mr. Arnold, about the plaintiff's attorney's own view of that particular case?

A Well, what that indicates to me is that they felt that that case needed to be retried.

Q In each of these cases, was the plaintiff represented by a competent attorney?

A Yes --

Q Who made a decision?

A Yes, I know each one of these plaintiff [247] attorneys, they're all competent, and they're all experienced litigators.

Q Was there any effort, if you look at the time frame involved, or anything that you saw on behalf of State Farm, that you said, "We're going to hold out and not pay you"?

A No, I think, absolutely no indication of that. These cases were settled soon after the verdict in each case. Very soon.

Q When did you make the search for these excess verdicts, Mr. Arnold?

A I made the search in January and in February of this year.

Q Mr. Short's answer to interrogatories, did it say that he was talking about the 1980s?

A I don't remember.

Q Okay, I'll represent to you that -- Do you have that, counsel?

MR. CHRISTENSEN: I do.

MR. BELNAP: Your Honor, I think it was up there, and I think the point --

MR. CHRISTENSEN: I think the jury read it.

MR. BELNAP: -- is done, and I'm finished.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF WENDELL BENNETT, JUNE 28, 1996, JULY 5 & 9, 1996

[Vol. 16, R. 10271, commencing at p. 217]

* * *

WENDELL BENNETT called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Would you state your name, please.

[218] A Wendell E. Bennett.

Q And what is your age, Mr. Bennett?

A Fifty-nine.

Q And you are a practicing attorney here in the state?

A Yes.

Q You were the attorney who represented the Campbells in the underlying case, which is the subject of this case; is that true?

A That's correct.

* * *

[220] * * *

Q You got paid a little over $20,000 for preparing and trying the Campbell case up through the trial; is that true?

A About two years of work, I was paid approximately $20,000, yes, sir.

Q Now, that wasn't two solid years of work, right?

A No, I handled many other cases during the same time. But the time frame I handled the Campbell case, up through the trial, was about two years.

Q I think you testified you had something like 235 State Farm cases up in the northern Utah area?

A Well, I had 235 State Farm cases between 1975, when I became a solo practitioner, and 1985 was the testimony.

Q Okay.

* * *

[Vol. 19, R. 10274, commencing at p. 4]

* * *

WENDELL E. BENNETT called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

[6] * * *

Q Okay. Have you had a chance in this case to look at the Excess Liability Handbook?

A No.

Q This is something that would not have been given to State Farm's attorneys, I presume. Have you ever heard of the Excess Liability Handbook?

A I haven't. Or if I have, it's been so long I don't remember. I hear a lot of things and --

Q Let me represent to you that this was a handbook, written at State Farm, there's been quite a bit of discussion over the role of the fire company in this, and the auto company and so forth, and I'm not going to ask you about that, obviously you wouldn't know. But it was a handbook that applied to excess liability cases, or cases with potential excess exposure, the kind of case we're talking about, here.

MR. HANNI: I object, Your Honor, to counsel's characterization of that. That's a 1972 fire manual, and it's pretty hotly contested, it had nothing [7] to do with Utah.

MR. CHRISTENSEN: Well, Samantha Bird said she was given it to look at, so did John Crowe.

THE COURT: All right.

MR. CHRISTENSEN: Said he had it in Utah.

THE COURT: Overruled.

Q (BY MR. CHRISTENSEN) Now, this handbook talks about--and let me find the reference -- it says, "The claim superintendent should not overlook the opportunity to strengthen his file by preparing self-serving correspondence."

I realize you haven't seen that, but doesn't that sound like what I'm pointing to right here, letters, memos, and reports, giving the appearance that they do not believe that they're putting the policy holder at risk? Wouldn't that be an example of strengthening a file in an excess exposure case with self-serving correspondence?

A Well, in that narrow context I suppose what you're saying may be true. Although I've never seen that manual, I don't know what it says, and I would think you'd need to read the whole manual, Mr. Christensen, to understand the context it was being used in.

Q Okay, let's move to another part. This [8] suggests, and I guess I've suggested it, but I think it's valid, that the company would not want an evaluation from defense counsel in the file indicating the risk of an excess verdict. Again, this is about excess cases. You see this heading that says, "Disregarding the recommendations of trial attorney"?

A My glasses are pretty good, but not quite that good.

Q I'm sorry. Have I read that heading right?

A "Disregarding the recommendations of our trial attorney." That's what it says.

Q A company in an excess case would not want their file to reflect that they had disregarded the recommendations of their trial attorney if they chose not to settle, would they?

A I think if they had disregarded it, they wouldn't want that in the file.

Q Okay. And this manual goes on to say, "We do not wish the trial attorney to make dollar evaluations of any

particular claim in the file." Doesn't that sound like this, they're trying to avoid having this in the file?

A Well, now, read it again. I'm sorry.

Q "We do not wish the trial attorney to make dollar evaluations of any particular claim in the file."

[9] A Well, if I was aware of that manual, and it applied to work I did, that would probably apply. But I'm not aware of that manual, and in cases I handled, except when I felt there was just no liability, I routinely put a dollar amount in an evaluation.

Q But you didn't in this case, did you?

A I sure didn't, because I felt this case was a non-liability case.

Q And State Farm never asked you to put a dollar evaluation in this file, did they?

A I don't believe they ever did.

Q This manual also, another part says, speaking of their desire not to have a dollar evaluation in the file, says, "Besides adding nothing, the percentage valuation, or the dollar valuation may be very detrimental to the file." Doesn't it sound like they're trying to keep this out of an excess file?

A That's the fire company in that manual.

Q How do you know that?

A Well, you just told me that, and Mr. Hanni mentioned it in his objection.

Q You're not aware of testimony of Mr. Macherle in another case where he said that part 5 of this manual came right from the auto company manual?

A I don't know a Mr. Macherle, so obviously -- [10] I think you have the exclusion rule, I've only been here for my testimony, so I obviously haven't heard it.

Q Okay. Are you aware that this manual goes on and provides that -- Well, let me read it to you.

MR. BELNAP: Counsel, there's one in evidence. Is it all right if the witness looks at it?

MR. CHRISTENSEN: Sure.

MR. BELNAP: Which page are you on?

MR. CHRISTENSEN: My page is going to be one or two numbers off, but it would be close to 48.

MR. BELNAP: The sections he was referring you to previously are here, and I think he's --

MR. CHRISTENSEN: I've now gone to part 5.

THE WITNESS: I have page 11 on part 5.

Q (BY MR. CHRISTENSEN) Do you see Roman Numeral IV, it says, "Attorney's File Review and Opinion"?

A I see that.

Q Now, look at number 4 under that.

A Under subparagraph A, or under subparagraph B?

Q See where it says, "Attorney's opinion is necessary for careful evaluation of the case for settlement"?

A Yes.

[11] Q Okay, and that's true, isn't it? The trial attorney's opinion is pretty important in evaluating the case.

A Oh, I think so. I think that's one of the items you look at.

Q Okay, could I have you turn the page, to page 12 of part 5. You see up at the top it says, "Contents of the File, Review and Opinion"?

A I see that.

Q So that's saying what they want the attorney to put in his file review and opinion when he writes to the company and evaluates the case. Does that look like I've got that in context?

A Let me read a little bit before that so I can see. This is the first time I've seen this, Mr. Christensen.

Q And I'm not going to ask you extensive questions about this. Have you looked at enough to be satisfied they're

talking about the attorney's file, review, and opinion?

A I see the context it's asked in. I surely haven't studied it in any detail.

Q And I understand that. Okay, on page 12, moving down to the bottom of the page, paragraph 5?

A Yes.

[12] Q It says, that they want the estimate as to the amount of the verdict if the plaintiff wins in the attorney's file review, and then do you see in parentheses, it says, "Not in writing if policy limits are involved"?

A I see that.

Q Doesn't that fit what I'm describing here, that they're trying to keep out of the file any evidence from the attorney handling the case that the amount of the verdict could exceed the policy limits?

A Well, I think we've switched, then. Last week, as I recall -- and it's been a week -- you were asking me what, as an attorney, I would want in there, or would want to give the insurance company in their file. I've testified to that, and I stick with that testimony.

Q Well, maybe you and I misunderstood each other.

A We may have done.

Q We were talking about what an insurance company, looking out just for its own self-interest, would want or not want in a file under our hypothetical case. Not what you as a lawyer would put in there. I was talking about what the insurance company would or would not want in the file in its own self-interest.

A Then I would suspect you'd better ask the [13] insurance company, Mr. Christensen. I only know what an attorney does.

Q But you've represented insurance companies, now, for about thirty years, haven't you?

A Yes, I have.

Q And certainly you have enough information to know what things would or would not potentially hurt an insurance company if they gambled in an excess case and the gamble didn't pay off.

A That has never been a consideration of mine.

* * *

[55] * * *

Q Now, you retained Dahle on September 28th, '81. Does that sound right?

A It would be right close, there.

* * *

[58] * * *

Q Okay. At least from looking at your own time records, it looks to me like you met with him on that same date, January 25th. You then met with him again the end of March, on March 22nd, '82; isn't that true?

A That's right, yes, sir.

Q And you tape recorded that meeting, because [59] it was easier for you to tape record it than sit and take detailed notes?

A Yes, because it was intended to be a "let's discuss this, let's discuss that, let's try this on, let's try that on." So I felt like I could benefit more from it and understanding it more by tape recording it.

* * *

[66] Q I'm moving to page 138. Dahle says at one point, "I realize there's not much to go on, here, but I've worked this sucker 9,000 ways."

He was having real difficulty coming up with numbers that didn't show Campbell was at fault, wasn't he?

A Nope.

Q Page 140. Mr. Dahle says, "I feel that I personally -- You haven't asked for my opinion."

And I find that curious, Mr. Bennett. Didn't you hire Mr. Dahle for his expert opinion?

A Yes.

Q "I feel that I personally -- You haven't asked for my opinion, but I think that, yeah, Campbell did look, and it was clear, and he pulled out, and he didn't look for three or four seconds, and when he did, here comes Ospital, and it's all over with."

A That's what he said.

* * *

[70] * * *

Q In fact, as you drove back to your office from meeting with Mr. Dahle in Logan, you dictated a memo that was typed and put in your file, didn't you?

A I did.

Q This was dictated within an hour or two after your meeting with Dahle, or less?

A It was dictated on my way back to Salt Lake from Logan.

Q You start this out by saying, "Bob Dahle can be used to good effect at trial of this case. However, we've got to go over his testimony with him a number of times and have him avoid saying things like, 'Campbell was right in the thick of it,' or 'Campbell caused the accident,' things like that."

* * *

[72] * * *

Q (BY MR. CHRISTENSEN) Mr. Bennett, we left off with this memo from your file about reviewing the testimony with Mr. Dahle to have him avoid saying things [73] like "Campbell caused the accident," and the fact that 200 feet was less than a second under Mr. Dahle's computations.

Now, isn't it true that Mr. Campbell, in his own deposition, his own sworn testimony, admitted that he'd gotten back to his lane about a second before Ospital passed?

A That's what he said.

* * *

[89] * * *

Q All right, I want to move to a new subject. I think I'm through with these.

I'm going to show you another document from your file, Mr. Bennett. This is a letter dated April 27th, 1983 to you from Mr. Humpherys. I'll show you the second page so you can see that it's from Mr. Humpherys. This is apparently hand delivered, rather than sent through the mail?

A That's what it says.

[90] Q Okay. Let's read that. It says, "Dear Wendell. I have previously indicated to you that we have retained an expert who exonerates Ospital from liability and places the entire blame on Campbell. I have not yet given this report to plaintiff."

He's referring to Dr. Watkins, isn't he?

A I am assuming he is, yes, sir.

Q "It is our desire -- " And that's true, isn't it? Dr. Watkins' testimony at trial did that very thing, didn't it?

A It had the tendency to do that, yes, sir.

Q And Dr. Watkins testified at trial that he'd been able to determine by scientific means, knowing Slusher's speed and the weight of his van and Ospital's car, and the lengths of the skid marks, and how far the vehicles had moved after impact and so forth, he testified that Ospital was not exceeding the speed limit, didn't he?

A That was his testimony.

Q Okay. He goes on to say, "It is our desire to reach a settlement with plaintiff as soon as possible. The discovery is essentially complete as it relates to the plaintiff's case.

"I discussed earlier with you the fact State Farm should tender its limits. A limit of $25,000 is [91] too low to risk excess exposure by exposing its insured to personal liability.

"It would be in State Farm's best interest to join with us in unitedly negotiating a settlement with plaintiff. We would insist, however, that State Farm be willing to pay its limits. If not, we will try to negotiate a separate settlement with plaintiff, which may not likely be favorable to Campbell's interests.

"We intend to meet with Mr. Barrett after the depositions on Monday, May 2nd, to discuss settlement. If State Farm is unwilling to tender its limits at that time, we will proceed to negotiate directly with plaintiff."

You certainly received this letter on or about this date, didn't you?

A Yes, sir.

Q And Mr. Bennett, State Farm not only had this opportunity to join in settlement, but probably had at least a half a dozen other chances to settle within Campbell's policy limits before the excess verdicts; isn't that true?

A That's correct.

Q And every time State Farm refused to do it.

A That's right, the case was not settled.

Q And they never offered a dime.

[92] A That's correct.

Q And that was true right up through trial.

A That's right.

Q There were several chances, even as the evidence unfolded at trial, that State Farm had to settle, and wouldn't do it.

A I think every morning Mr. Humpherys would say that to Mr. Campbell and I.

Q And you'd go call Jerry Stevenson at State Farm, and Stevenson would say, "Don't settle."

A Well, first I would talk to Mr. Campbell about it, tell him, "You've seen the evidence, you know what the evidence is, what are your feelings about it?"

He would say, "I don't want this case settled. We didn't do anything wrong."

Then I would report that to Jerry Stevenson, I would report the statement by Mr. Humpherys, I would report Mr. Campbell's response to it, I would tell him my impression of how the case was going, and we would proceed.

Q And Stevenson would say, "Don't settle."

A Based on the report I gave him, he said that.

Q Now, is it your testimony that if Campbell had said, "I want it settled," State Farm would have settled?

[93] A My testimony is if he'd have said that I surely would have conveyed that information to State Farm.

Q Mr. Campbell was relying on you to tell him if he should settle, wasn't he?

A I imagine he placed some reliance on that, as I placed some reliance on him, sir.

Q Now, at the time that you received the letter that we just had on the screen from Mr. Humpherys, which basically said, "We want to settle, and if you won't make your limits available and join with us, we're going to explore it without you," when you got that letter, Mr. Campbell was on a mission, wasn't he?

A He was.

Q Weren't they on their mission during most of the time this case was pending?

A They were on their way to their missionary service at the time their depositions were taken in March of 1982, and they returned in late August, 1983.

Q They got back just in time for the trial.

A About two weeks before the trial, as I recall. We -- That was at their request, to try to get it set so they would not have to return from their mission for the trial.

Q Now, in Mr. Humpherys' letter he pointed out [94] that Mr. Campbell was at risk for an excess verdict, didn't he?

A Yes, he did.

Q This is now your letter -- And you sent a copy of it to Mr. Campbell in Minnesota?

A Yes, sir, I did.

Q And you said, "What Mr. Humpherys is attempting to do is to spook or coerce you into demanding that State Farm offer your policy limits of $25,000 toward a proposed settlement of the Slusher claim."

You're basically telling Mr. Campbell, "Don't pay any attention to Mr. Humpherys' letter, he's trying to sucker you, he's trying to scare you," didn't you?

A No, I said Mr. Humpherys is trying -- "What Mr. Humpherys is attempting to do is spook or coerce you into demanding that you demand State Farm offer your policy limits of $25,000." That's exactly the words I used.

Q And Mr. Humpherys was pointing out that a limit of $25,000 was too low to risk excess exposure by exposing its insureds to personal liability. Now, Mr. Humpherys couldn't call Mr. Campbell and tell him that, could he?

A No, sir. Well, I guess he could, but he [95] would be violating --

Q He'd be in big trouble if he did.

A He would.

Q And you did what you could in your letter to convince Mr. Campbell not to pay any attention to that statement, didn't you?

A Well, I sent him the letter, I gave him what my impression was.

Q And then you go on to say, "I think that the so-called expert --" Why would you call Watkins a "so-called expert?" He was a doctor of engineering, wasn't he?

A Agricultural engineering.

Q He had a lot of background in mechanical engineering. Is it your testimony he was an agricultural engineer?

A Something to do with agriculture.

Q He was a mechanical engineer, was he not?

A I would have to look at his curriculum vitae. I have not seen that. But my recollection is he was something in the agricultural field.

Q He'd had a lot of experience reconstructing accidents?

A He had. He'd been used quite a little bit.

Q In fact, he'd even taught Mr. Dahle, hadn't [96] he?

A Mr. Dahle, I believe, had some work with him. Much earlier.

Q You go on and say, "The so-called expert who supposedly exonerates Ospital is a Utah State University professor by the name of Watkins." And then you basically go ahead and tell Campbell, "You've got nothing to worry about with Watkins' testimony," didn't you?

A I said, "I do not feel, however, that Watkins really knows too much about this case." So I think you try to interpret my words differently than they are stated, Mr. Christensen.

Q Isn't it true that in most accident reconstruction cases, the experts aren't at the scene of the accident right after, but they're brought in sometimes months, sometimes years later?

A Sometimes that's true, unless you're fortunate enough to find one that was there.

Q Then didn't you go on in this letter, and we've had it on the screen before, and basically tell Mr. Campbell that the evidence showed he wasn't at fault, and he clearly didn't cause the accident?

A The letter would have to speak for itself, Mr. Christensen. I don't have it in front of me. It [97] says what it says.

Q Well, that was certainly your input to Mr. Campbell, wasn't it?

A Well, my input is in that letter, so I would say that is the letter that I sent to him.

Q Now, you'd represented to the Campbells, had you not, that if there was adverse evidence, you would tell them about it?

A That came up after Slusher's deposition. Because they were present at Slusher's deposition, and he was, of all of the van people he was the most incriminating.

Q But you told them Slusher was a lying son of a bitch, and that the jury wouldn't believe him, and they didn't have to worry about him, didn't you?

A I didn't tell them that. That memo was to myself. And granted, I used pretty course language in a memo to myself. I did not use that to the Campbells. I don't -- You know, these are people just on their way on a mission, which is a very sacred experience to them, and so --

Q Did you, in any event --

MR. HANNI: I object to counsel interrupting the witness before he finishes his answer, Your Honor.

THE COURT: Did you finish?

[98] THE WITNESS: No.

Q (BY MR. CHRISTENSEN) Go ahead.

A I did not tell them that. We discussed that they were there, they heard him, was there any substance to it? They knew what was coming, and they says, "That is just absolutely not true, it didn't happen that way. He is not being truthful with us."

Q But you told the Campbells, you can handle Slusher, "Don't worry, the jury won't believe him, you've got no problem."

A No, I didn't tell them that, Mr. Christensen.

Q That was the only deposition that they attended.

A That's the only one they attended. It's not the only one they discussed.

Q Now, you were sending the deposition summaries to State Farm. You sent all of those to them, didn't you?

A Yes, sir.

Q You didn't send any of those to Campbells.

A No, I never do send the resumes to the client. I talk to the client.

Q And the Campbells pretty well had to rely on you to interpret the evidence for them and tell them what was going on; isn't that true?

[99] A Well, I wouldn't say "pretty well rely on me." They were very -- Mr. Campbell was a very bright person. He had a lot of engineering background, and we reviewed this, and I gave them my input, yes, sir. I gave them my input for sure, and they gave me theirs.

Q But he wasn't bright enough that while he was in Minnesota, and you were taking depositions in Utah, that he knew what was being said in those depositions, except as you told him; isn't that true?

A He found out what was in them when we discussed them getting ready for trial, yes, sir.

Q He found out, because of what you told him.

A That's right.

Q After the letter that we just put up that Mr. Humpherys wrote saying, "You ought to settle," you then had a telephone conversation with Mr. Campbell; isn't that true?

A I believe we had telephone conversation relative to answering some interrogatories. Which was about that time, yes, sir.

Q Right after you talked to Campbell you wrote to State Farm. And we've got a letter on May 2nd, '83.

A That sounds about right.

Q All right, you wrote to Jerry Stevenson at State Farm. By this point in time Stevenson had [100] replaced Noxon, right?

A I believe so. As I recall, Mr. Noxon went to Colorado Springs as a superintendent, and Mr. Stevenson took over his position.

Q Okay. And in that you said you'd had a conversation with Mr. Campbell --

A Let's see, where are you looking at, there? I'm not focusing right on it, Mr. Christensen.

Q And it's not the part I've underlined. I'm not sure it's referenced here. But you did speak with Campbell on the phone, right?

A I'm sure I spoke with him at least once, and maybe more than once.

Q Now, you reported to Mr. Stevenson that you had sent Mr. Humpherys' letter on to Campbell, the one that said, "You ought to settle, Campbell doesn't have adequate insurance -- "

A Is that on the front page of that letter?

Q Yes, it is.

A I'll take your word for it. I know I would have said that. I've seen that.

Q I'll show you where it is.

A Sure, right there.

Q "Here's a photocopy of the letter, and I've written to Campbell, and I'm sending Humpherys' letter."

[101] A That's right, I've sent him both the Humpherys letter and a copy of my letter to Mr. Campbell.

Q Okay. And in this letter to Stevenson you gave him some good news. "I really do not believe that Mr. Campbell is going to be at all insistent that we pay limits, or for that matter, pay anything to settle this case."

Mr. Bennett, who were your ethical duties of loyalty to?

A Curtis Campbell.

Q Who is "we"?

A That's Curtis Campbell, Wendell Bennett, and State Farm.

Q The "we" there refers to you and State Farm, doesn't is it?

A And Curtis Campbell.

Q Curtis Campbell was going to put up some money?

A No, I didn't say that.

Q You're writing to Mr. Stevenson of State Farm saying, "Mr. Campbell is not going to be at all insistent that we pay limits." Meaning State Farm pay limits, right?

A State Farm, himself as their insured, and [102] myself as his attorney. That's how I mean the word "we."

Q You're telling State Farm they're not going to have to deal with this, aren't you? That is a demand from the policy holder or his attorney, that the case be settled?

A I'm reporting to State Farm factually what Curtis Campbell said to me, sir.

Q Mr. Campbell said it after asking you for your advice, didn't he?

A Well, I'm not sure it came in that order, but he asked for my advice, I asked for his input, I wanted to verify that he still felt as strong about what he had told me how the accident occurred. All of those things were part of that equation.

Q Instead of telling Mr. Campbell that he had nothing to gain from a trial, and that it was totally in his best interest to settle within the policy limits, you told him that he essentially had no risk, didn't you?

A I didn't tell him he had no risk.

Q You told him he had 5 percent, a 5 percent chance of being found 5 percent at fault, didn't you?

A That was what we talked about when he was in my office after a return from his mission.

[103] Q And you told him he had plenty of insurance.

A That's what I felt at that time, and that's what I told him.

Q You never once told him, "This is foolish for you, Mr. Campbell. You have nothing to gain from a trial." Did you tell him that?

A I did not tell him that. I didn't feel that way.

Q And you never told him about the law of bad faith, and how if he made a demand that State Farm settle, that it would strengthen his rights against State Farm if they decided to gamble, did you?

A In those words, I don't think I said that.

Q You never even breathed the word "bad faith" to him, did you?

A I can't say that I did, and I can't say that I didn't. There's a possibility it was discussed. But I can't honestly, under oath, tell you that, Mr. Christensen.

Q Well, under oath you have said a couple of times that you never mentioned bad faith to Campbell, haven't you?

A Well, like I just said a moment ago, I can't tell you that I did or did not, and particularly in those terms. We talked about what his policy limits [104] were, we talked about the demands that were being made, and that's all I can tell you. I told him he should consult with another attorney to get a second opinion if he had any doubts himself.

Q Weren't you asked at the trial last year if you had ever explained to him the law of insurance bad faith?

MR. HANNI: Where are you reading from?

MR. CHRISTENSEN: Page 962.

Q (BY MR. CHRISTENSEN) That if he would make a demand on State Farm that they settle within the policy limits, that would give him some protection later if there was an excess verdict? And didn't you say you didn't do that?

A That's what I just told you. I don't recall using those words. We talked about how much insurance he had, Mr. Christensen, and we talked about what they wanted, and we were getting his input on what he wanted to do.

Now, I'm not saying that I used bad faith or I didn't use bad faith. I'm telling you we held a dialogue to try to find out, for my purposes, what he thought about the case, and I was sharing with him my thoughts about the case.

Q You never recommended to him that he send [105] this kind of a demand, did you?

A No, sir.

Q Is it your testimony that if he had said, "I want you to demand from State Farm that they pay the insurance limits," you'd have done it?

A I would have told State Farm that he would have wanted them to pay the insurance limits. You bet I would.

Q And if that kind of a letter had been in the file, they'd have pretty well had to have settled, then, wouldn't they?

A That would be a decision they would have to make.

Q It would put a lot of heat on them to settle, wouldn't it?

A I don't know if it would put heat on them or not. All I can tell you, if Mr. Campbell had ever said he wanted that done, it would have been done, and it would have been sent to State Farm.

Q It should have been done, shouldn't it?

A You want 1996 testimony now, or do you want to know how I felt in 1983?

Q There's no question it was in Campbell's best interest back in 1981, 1982, 1983, to have demanded this case be settled within its policy limits, is there?

[106] A I did not feel that there was a reason for that then. As I viewed the case.

Q State Farm never asked for an evaluation of the case, a dollar evaluation, or an evaluation as to the risk of an excess exposure, and you never gave it, did you?

A No, the valuation I gave was as to the liability. I didn't feel there was liability. I gave that to them and I gave it to the Campbells.

Q To evaluate a case, you've got to evaluate liability and damages, don't you?

A If you get by the liability, if you think there's going to be liability found against your client, then you have to evaluate the damages, yes, sir.

Q You have to tell them, if they lose, what it's likely to cost, don't you?

A You sometimes do that if you think there's going to be liability found against the client, yes, sir.

Q This is an uncertain business we're in. You can't ever say there's no chance, can you?

A You have to use your best judgment. We don't go to the jury room, we don't decide the cases, that's the province of the jury.

Q That's why one of my senior partners likes to [107] call courtrooms the hall of chance. Have you heard that?

A Well I hope it's not the hall of chance.

Q He's joking, obviously.

A I surely hope so.

Q But it's recognition of what, as trial attorneys, we all know, and that's that it's risky, isn't it?

A Every once in a while you come up with a strange verdict, I'll put it that way. And they go both ways. Sometimes you expect you're going to lose a case and you win, sometimes you expect you're going to win the case and you lose. That's a rare occasion, but it has happened.

Q And that's why people settle, is because they don't know?

A That's one of the aspects, yes, sir.

Q And that's why Mr. Campbell had nothing to gain from running that risk, isn't it?

A Maybe his honor. He was very adamant he had done nothing wrong to cause this accident.

* * *

[109] * * *

Q ...And then he was asked, "Well, wasn't it important to you to basically be able to vindicate your account of the accident and what happened out there?"

And his answer was, "Not that I remember."

That's an accurate representation of the conversation between you and Mr. Campbell, is it not?

A It was, down as far as the percentage. The last part of it did not occur, sir. Because he remained very adamant in both of the meetings we had after they returned from their missionary service, that he had done nothing wrong, and he didn't want to pay Mr. Slusher anything, and he didn't want to pay the Ospital estate anything.

[110] * * *

Q (BY MR. CHRISTENSEN) All right, let me move to another part of Mr. Slusher's deposition, or deposition summary. You knew, as you reviewed this case, Mr. Slusher was very seriously injured, did you not?

A Yes, sir.

* * *

[114] * * *

Q No question Mr. Slusher was very severely injured, is there?

A No, I've never questioned that, sir.

Q His medical bills, even not counting the free care he got, were almost as much as Mr. Campbell's insurance limits.

A My recollection is he had about $20,000 in bills.

Q Now, as you did the discovery in this case, you also learned that Todd Ospital had been a very unusual young man, didn't you?

[115] A Well, I don't know if he was unusual. I thought he was a fine young man.

Q In your entire career have you ever had a case where a young person that was killed had been a Sterling Scholar, with a 3.96 grade point average, senior class president, I think he was the point guard on the basketball team. Have you ever seen that combination in a case that you've handled, where someone young with that much potential was killed?

A Well, not that had that kind of a grade point and was a Sterling Scholar and a point guard, no, sir. I've had other cases involving very upstanding people that have been killed, unfortunately.

Q I'm looking at the documents from your own file you obtained through discovery. There's some absolutely glowing letters, here, from coaches, teachers, supporting his application for Sterling Scholar, aren't there?

A Yes. He was a very fine young man, I'm sure.

Q And all that's taken into account by a jury when they place a value on the loss parents have when they lose a son, isn't it?

A If there is liability found, yes, sir.

Q Now, you met with the Campbells on two occasions just before the trial in '83.

[116] A I did.

Q On August 30th and September 7th.

A That's correct.

Q And you told them that they had absolutely no risk for any responsibility for Todd Ospital's death, didn't you?

A I told them that, based upon my analysis of the liability in this case, I didn't think they would be found at fault for that at all, because I felt Mr. Ospital was either 100 percent at fault, or very close to it.

Q You told them more than that. You said it just would not happen that there would be any responsibility for Todd Ospital's death, didn't you?

A I told them that that was my opinion, that under the facts we had, that he was so grossly negligent, that they would have no exposure.

Q In fact, you said in your wildest dreams you could not imagine that they would have any risk for Todd Ospital; isn't that true?

A That's probably some words I would use, because that was my feeling.

Q And then you told them, with respect to Slusher, they had a 5 percent chance of 5 percent responsibility, right?

[117] A I believe I said five to seven.

* * *

Q All right, I'm looking at your trial [118] testimony from last October.

A Okay.

* * *

Q (BY MR. CHRISTENSEN) The question was asked, "Okay, and in spite of your knowledge of that law, and that there was some evidence to that effect, you told Mr. Campbell that there was only a remote possibility that any fault would be found on his; isn't that true?"

And would you read your answer, please?

A "I told Mr. Campbell, after reviewing all of the van people's testimony, and his own and [119] Mrs. Campbell's, that I saw that there was some possibility, I think about 5 percent chance, they would find him at fault, and not totally at fault, about 5 percent chance. They might find him 5 percent at fault, was my basic bottom line. And that's what I believed, based upon my assessment of the evidence after I completed discovery and spoke with him on two occasions in late August and early September, 1983.

Q So there you said only a 5 percent chance of being found any fault, and if you get some fault, it would be about 5 percent.

A That's what I said.

* * *

[123] * * *

Q Okay. So we're talking, this is covering your conversations with Mr. Campbell before trial. Your answer was, "I told him exactly what I testified to, Mr. Christensen."

And then I said that, "If he'd got any fault at all, it would be 5 percent, and his limits ought to be plenty to cover it."

And your answer was what?

A "That's what I told him, basically."

Q And then I asked him, "And you told him under [124] your analysis you saw that he had no fault at all, and his passing had nothing to do with this accident."

A "I told him that was my best understanding of the evidence from what I had seen."

* * *

[126] * * *

Q (BY MR. CHRISTENSEN) Now, as far as you can recall, Mrs. Campbell was present at the meetings that you had with Mr. Campbell; isn't that true?

A She was present in almost every one. I know she was there on September 7th, and my best impression she was there on the August 30, too.

Q And you not only expected Mr. Campbell would rely on your advice and your input, but you expected that she would too, didn't you?

A Well, I wasn't representing her, but she was always present, and they seemed to do things together, so I assumed that she was listening. She wasn't being sued, though. She was not in this lawsuit.

Q But she was certainly going to be affected if there was an excess verdict.

A I would assume she would be.

Q Now, Mr. Bennett, we discussed this earlier, [127] and I don't want to go back and rehash it, but I need to come back to it for a moment. You had told the Campbells early on that your ethical duties ran to them, and that even though State Farm was paying you, you would look out for their best interest.

A I did.

Q Now, you testified at the trial last year that you felt Campbell was as credible as they come as a witness, didn't you?

A I felt that he was, and that's how I testified, yes, sir.

Q Okay. Now, after the jury rendered a verdict, or verdicts in this case, in September of 1983, the Campbells drove you to the Logan airport so you could fly your private plane back to Salt Lake. Do you recall that?

A Yes, I do.

Q And they were extremely concerned that there had been excess verdicts rendered against them, weren't they?

A They were.

Q And they asked you what they should do, and you told them, "Put a sign on your place," didn't you?

A No, absolutely didn't.

Q You never said anything about selling their [128] property?

A I didn't. I can tell you what I did tell them.

Q Well, we'll get to that in a minute.

A Okay.

Q You deny, even though that's the Campbells' sworn testimony, you deny ever saying that.

A I absolutely deny that.

Q Now, a few days later -- Well, before I get to this, because this does move to the next step, you've indicated you didn't say that. What do you claim you did say?

A I told them that I felt an error had been made in the case, that I would file post trial motions, trying to get the relief from that error, and I assured them that if that failed, I planned to file an appeal to the Utah Supreme Court, because I felt that there had been such a basic error made at one part of the case that they had been deprived a fair trial, and that's, in my opinion, what had gone wrong.

Q You did not have any discussion with them about what effect this would have on their property and their security and what was going to happen to them?

A That came up, and do you want to know how it came up?

[129] Q Well --

A It was either Mr. or Mrs. Campbell said, "Should we put a sign for sale on our property?" And I said no.

Q You said, "State Farm will protect you, you don't have to worry"?

A No, I said what I just told you a moment ago. I said that I was going to file post trial motions, and if that failed, if I wasn't able to get the relief at that level, I planned to file an appeal to the Supreme Court.

Q All right.

A And I did suggest they go see another attorney if they -- Because I had been told at that time that --

Q Well, we're getting in an area that is getting close to some rulings of the court.

A Okay.

Q So I want to make sure that we proceed, here, in an organized way. They did go get counsel in Logan, didn't they?

A They did, at my suggestion.

Q Mr. Hoggan and Mr. Jensen.

A I received a letter from Mr. Hoggan. That letter that you have up on the screen.

[130] Q And this is out of your file, right here.

A It is.

Q And this date that says "received October 4th, 1983," is that normal practice in your office? Do you want to see --

A Well, yeah, I can't tell if that's a 1 or a 4 on the October. It's October 4, yes.

Q Okay. So that's the date that it would have been received in your office?

A Yes, that's my date stamp. That's where, at the time, we were stamping mail in.

Q This is a letter that's been read enough times, I think if we read it again the jury may shoot us.

A Well, then let's pass it.

Q This is the letter where Mr. Hoggan -- And we've had testimony before that Mr. Jensen, whose initials are here, actually prepared the letter, with Mr. Hoggan's input, Mr. Hoggan signed it?

A I don't know anything about that.

Q And because the jury has seen this so many times I'm not going to take the time to reread it. You got the letter on October 4th, and this is a letter, now, from your file, dated October 7th, so you'd have written this three days after you got the letter we just [131] saw.

A Well, it would have been transcribed three days after. I don't know that that's the day I dictated it.

Q You may have even dictated it the same day for all --

A Could have been.

Q Okay. It says, "Enclosed herewith please find a photocopy of a letter received October 4th from attorney L. Brent Hoggan in Logan. The letter is rather self-explanatory." And that was a true statement, wasn't it?

A Sure.

Q "And is obviously an attempt on the part of Mr. Hoggan to put as much pressure as is possible on State Farm to do whatever is necessary to keep Curtis Campbell from having to in any way respond to the judgment in excess of the policy limits."

That's clearly how you understood the intent of that letter, isn't it?

A Well, I understood the intent of the letter to do that, and also to insist that I do what I had already planned to do, file the post trial motions and the appeal. He insisted I do that, and I had planned to do that anyway, and I did it.

[132] Q Well, they wanted you and State Farm to do whatever was necessary to protect Mr. Campbell; isn't that true?

A Well, I sure assumed they wanted me to do everything possible, and I did.

Q You did not understand this letter as saying, as has been suggested earlier in this trial, that, "As long as you appeal and file post trial motions, and six years later pay the judgments, that that's all we care about"? You didn't understand it that way, did you?

A You lost me on some --

Q You did not understand Mr. Hoggan's letter -- and if we have to we'll put it back on -- but you didn't understand him to say, "Look, as long as you'll file post trial motions and an appeal, and six years later pay the judgments, that's all we want"?

MR. HANNI: I object to this, Your Honor. In fairness to the witness, I think he ought to see the prior letter so he can see what it says.

THE COURT: If he wants to see it, he can, Mr. Hanni.

MR. CHRISTENSEN: Sure, we can see it. If you want to take the time, we'll look at it again.

MR. BELNAP: Can't you just hand him a paper copy of it, counsel, so that he has both at the same [133] time?

THE WITNESS: I would much prefer to look at the paper, rather than your projection.

Well, as I review the last paragraph of that first page, it's that he's insisting that State Farm pay any judgment, and he's also insisting that we undertake the post trial motion and the appeal. That's what I read in the last paragraph of that first page, Mr. Christensen.

Q (BY MR. CHRISTENSEN) Sure, that's in there.

A Yeah.

Q He's saying, "Pay it now," isn't he? "Protect me now. Not six years from now." Isn't that what this letter means?

A Well, how do you pay it and then file post trial motions? That is totally inconsistent. I think he's saying, as I understand what he's saying, if you want my understanding, because the letter was written to me, is, "Okay, we want you to make the post trial motions, and if you don't prevail on that, we want you to pay the judgment," which, as I understand, was done.

Q Six years later.

A Well, when the judgment was finally affirmed in the Supreme Court, my understanding is it was paid immediately.

[134] Q You understood that they were saying, "Protect Campbell now," didn't you?

A I was understanding that they said protect him by filing post trial motions and an appeal, and then pay off the judgment if you don't get a new trial. That's how I understood it.

Q And you didn't get a new trial. That was decided in November, which would have been a few weeks after this letter. You lost your motions for new trial.

A That's right.

Q And they didn't pay, did they?

A No, they filed the appeal.

Q And they wouldn't put up a supersedeas bond, either, would they?

MR. HANNI: Your Honor, I think the witness ought to be given time to look at the second page of the letter, too.

THE WITNESS: Yeah, on the next-to-last paragraph, there, that's pretty clear what he's saying. We want you to file the post trial motions and the appeal, and if that's not successful, pay the judgment. That's what it says to me.

Q (BY MR. CHRISTENSEN) And how do you protect somebody, in the years it takes to pursue an appeal, from having their property taken while the appeal is [135] pending?

A Well, the way it was worked out in this case.

Q Well, that's one way. What's the normal way?

A I think the way it was worked out in this case is very normal.

Q For a bad faith excess verdict?

A No. No, for an agreement to be made that if things don't get taken care of, then you could proceed against the insurance company.

My understanding is that, as of January 6 of 1984, some kind of an arrangement was made between the Slushers, the Campbells, and the Ospitals, that the appeal would proceed without a supersedeas bond being posted.

Q All right, are you through with that?

A I am.

Q Under the Utah Rules of Civil Procedure, the method that is prescribed to protect somebody from losing their property while an appeal is pursued is a supersedeas bond, isn't it?

A I think that's under the Utah Rules of Appellate Procedure, not civil procedure.

Q Well, whatever. The applicable rules.

A That's one of the ways you can do it, yes, sir.

[136] Q And that's the most common way, isn't it?

A Where an insurance company is involved, the most common way I've seen is just that there's an agreement it

won't have to be put up. And that ultimately, as was done in this case, if the appeal fails, it'll be paid.

Q Okay, before we leave this subject, again, you wrote to State Farm when you got Mr. Hoggan's letter, and you said, "The letter is rather self-explanatory, and is obviously an attempt on the part of Mr. Hoggan to put as much pressure as is possible on State Farm to do whatever is necessary to keep Curtis Campbell from having in any way to respond to the judgment in excess of his policy limits."

That would certainly include protecting his property from execution, wouldn't it?

A That was my understanding.

Q Now, you understood the Campbells needed protection. Once those verdicts were entered, it was going to be a short time before they would turn into judgments?

A I knew that.

Q What's that?

A I knew that.

Q And once people have a judgment, they can go [137] execute if they so choose, can't they?

A And that's why I suggested that they go talk to Mr. Hoggan.

Q There's no question it was in Campbell's interest to have State Farm put up a supersedeas bond for the amount of the judgments to protect them. That's a no-brainer, isn't it? That clearly was in their interest.

A Well, it was until the agreement was entered into between Campbells and Slusher and Ospital in January of 1984.

Q You mean December of '84?

A Well, I think it was finally agreed to in January. At least that's the information -- I believe it was Mr. Humpherys or Mr. Hoggan told me, "Yeah, we've come to an agreement," and I think that was in January. Although in principle I think it was worked out in December of '83.

Q We're going to get to the December 6th, '84 agreement. But I'm talking about, there's no question it was in Campbell's best interest for State Farm to put up a full supersedeas bond, is there?

A It was in Campbell's best interest to make sure some action was taken so his property would not be at risk, which I understand was done.

[138] Q It was clearly in Campbell's best interest to have a supersedeas bond posted by State Farm, wasn't it?

A I can't answer that any way than I've just answered it, Mr. Christensen. You've asked me that time and time again.

Q I know, and I'm struggling to know why that's a difficult question.

A I'm not having any difficult with it.

Q A supersedeas bond would protect the Campbells' property after execution pending appeal?

A It would be.

Q Would that be in their best interest?

A Unless some other arrangement had been worked out, yes, sir.

Q And you were the Campbell's attorney still at this time.

A I sure was.

Q All right, let's move forward. Now, once that there was a judgment against Campbell in favor of Slusher of eight times Campbell's policy limits, and another one of twice Campbell's policy limits for Ospital, State Farm finally offered the policy limits, didn't they?

A Yes, sir.

Q And you told them, when they discussed doing [139] that with you, that you thought there was very little chance that that would be accepted.

A I did.

MR. SCHULTZ: Counsel, did you say judgment was eight times the policy limits in favor of Slusher?

MR. CHRISTENSEN: Yes, sir.

THE WITNESS: You haven't given credit for the $65,000 that was paid by Slusher to Ospital.

MR. CHRISTENSEN: You're right, I forgot that. The verdict was eight times, the judgment was what? Five times, maybe?

THE WITNESS: Take $65,000 from it and do your math yourself. That's why I'm a lawyer and not a mathematician.

Q (BY MR. CHRISTENSEN) Now, you wrote a letter to Mr. Stevenson at State Farm on November 23rd of '83, and you said, concerning Mr. Hoggan, "I'm certain that he will immediately demand that we do whatever is necessary to protect Mr. Campbell, and will insist that we step in and agree to pay any judgment that is sustained against Mr. Campbell, regardless of the policy limits."

You said that in a letter on November 23rd, '83 to State Farm, didn't you?

A I'll take your word for it. I don't have the [140] letter in front of me, and my memory is not quite that detailed.

Q Do you have any reason to believe you didn't say that?

A Mr. Christensen, if you're reading from my letter, reading it correctly, I'll take your word for it.

Q I'm reading from your notes, but I think that's an accurate quote.

A Reading from my notes?

Q From my notes.

A Okay.

Q Let me read that again. "I'm certain," referring to Mr. Hoggan, "I'm certain that he will immediately demand that we do whatever is necessary to protect Mr. Campbell, and will insist that we step in and agree to pay any judgment that is sustained against Mr. Campbell, regardless of the policy limits."

And that is what Mr. Campbell, through Mr. Hoggan, was demanding at that time, isn't it?

A That was part of his demand, yes, sir.

Q Okay. Now, this is a letter -- I believe this is also from your file. Does that look like your date stamp?

A Yes, sir.

[141] Q Which you received from Jerry Stevenson at State Farm. Would you like the hard copy, or can you see this?

A I'd prefer the hard copy. Do you want me to read it?

Q Yes, if you would, please.

A "As we discussed by telephone on November 29, 1983, because Judge Christofferson denied our motion for new trial, you should proceed with an appeal.

"You have also inquired regarding a supersedeas bond, and it was agreed that you would discuss this matter further with Ray and Phil Ivie, defense attorneys in Provo. After your discussion with them, please forward to us your recommendation in handling the supersedeas bond."

Q Now, is this a mistake, the reference to Ray and Phil Ivie. Was that actually Strong and Hanni?

A I never talked to Ray or Phil, so whether somebody changed their mind later, or they meant to say Strong and Hanni, I would have to assume that's what happened. I don't know.

Q Okay. And they are asking you for your recommendation of the handling of the supersedeas bond, right?

A That's right.

[142] Q By the way, I see Mr. Manuel Mendoza's name down here. Do you know why his name's on here?

A I don't. I didn't write the letter, so I wouldn't know that.

Q So they're asking you for your recommendation on whether they should put up a supersedeas bond. You had a very clear conflict of interest in getting involved in this issue, didn't you, Mr. Bennett?

A You know, I probably did. I concede that I should not have done that at all. If you're interested I could tell you my reasons, but I admit, I erred in that regard.

Q And in spite of this conflict, you advised State Farm contrary to Campbell's interests on the supersedeas bond, didn't you?

A I reported what I found in the research of the case law to State Farm.

Q And I'm going to get into that in just a moment. You were State Farm's spokesman to the Campbells on this issue, weren't you?

A Well, up to the point of the trial I was. After the trial, I was no longer communicating with the Campbells, I was communicating with Mr. Hoggan.

Q Who was representing the Campbells.

A That's correct, yes, sir.

[143] Q So you were speaking on behalf of State Farm on these supersedeas bond issues.

A Well, it probably -- As I say, I erred in that regard. I probably should have said, "I can't get involved in this thing, that's a company decision." But I looked at it because there was little law on it, and I was trying to get some direction myself.

Q You knew it was in Campbell's best interests to insist that State Farm put up the whole bond, right?

A I believe that would be fair, and state that I would know that.

* * *

[146] * * *

Q So State Farm took the position, on your advice, through you, not to post the bond for the Campbells, at least beyond the policy limits.

A Well, I can't answer that question in, without telling you some other conversations that had gone on between myself and Mr. Hoggan.

Q Well, we're going to get into those, I suspect.

A Okay, then I can't answer the question the way you put it, Mr. Jensen.

Q Is it significant to you, Mr. Bennett, that the Excess Liability Handbook, under the heading "Court Bonds as a Caution," with an exclamation point, it says, "When ordering a bond in accordance with the basic memorandum, care must be taken to never order a bond in [147] excess of the policy limits without express prior approval of general claims."

A What's your question?

Q This is my question. If State Farm had posted a bond for the full amount of the judgments to protect Mr. Campbell's assets, then they would have had to have paid the full judgment if it was sustained on appeal, right?

A Well, they did pay the full judgment when it was sustained on appeal.

Q No, answer my question. If they'd posted a bond, they would have had to pay the full judgment, right?

A Sure. Same result that they had.

Q And that's exactly my point. In 1983, if they had intended to pay the judgment if it was sustained on appeal, there would have been no reason why they had been fighting posting this bond, would there?

A I don't know that there was a fight, Mr. Christensen. I think there was an inquiry going on to try to find out how to handle the situation we were faced with. That was my view of it, anyway.

Q Clearly State Farm did not want to put up that bond. There's no doubt about that, is there?

A They seemed to be saying that they had some [148] questions, and I had some questions. That was my interpretation.

Q They didn't want to put up the bond because if they did they'd have to pay the full judgment if it was affirmed; isn't that true?

A I think I just answered that.

Q And you even discuss that in one of your letters, don't you?

A I believe I said, "If you put up the bond and the case does not get reversed on appeal, then the bond will be executed upon."

Q "You'll have to pay the full amount." And that's why they didn't want to put up the bond, isn't it?

A You would have to ask them why they didn't want to.

Q Can you think of any other reason?

A Well, because Mr. Campbell, with the assistance of Mr. Hoggan, side stepped that thing. He negated it totally.

Q We just saw Hoggan's demanding you put up the bond.

A I saw that. He also demanded that we file the post trial motions, we file the appeal, and pay the judgment if it was finally sustained, which was done.

[149] Q State Farm never did put up a supersedeas bond, did they?

A I don't believe they had to after that agreement.

Q Eventually there was an agreement made, and we've discussed that at great length in Mr. Hoggan and Mr. Jensen's depos--testimonies, I should say--here?

A All I know is what conversations I had with them in December of '83 and January of '84.

Q You haven't read their testimonies they've given in this trial?

A No, I sure haven't. I haven't been asked to.

Q You were encouraging them, as was State Farm, to cut a deal with Slusher and Ospital so that State Farm wouldn't have to put up the bond, weren't you?

A No, sir.

Q You weren't encouraging them to cut a deal?

A I was encouraging them to cut a deal to protect Curtis Campbell, not State Farm.

Q And it just happened to be in State Farm's interest so they wouldn't have to put up the bond, didn't it?

A Well, I don't know how filing a bad faith case served State Farm's interest, Mr. Christensen. You lost me on that one. I encouraged them to do what they [150] needed to do with the assistance of Mr. Hoggan, who they said they were going to, and that's exactly what went on. What is the missing date in December of that memo? It's 12-something of '83.

Q I'm not sure, it was put in the file and cut off. We may have that someplace, but I can't tell you, I'm sorry.

A Because there were a number of conversations going on between myself and Mr. Hoggan's office at that time, trying to ensure the Campbells were getting protected.

Q You pointed out in this conversation that if they could cut a deal, the supersedeas bond issue wasn't critical, right?

A Well, that's what he wrote down, and I'm sure that that was part of the discussion we had, yes, sir. I was trying to make sure that the Campbells were going to get protected.

Q So in your mind, the posting of the supersedeas bond was tied to whether Campbell could cut a deal with Slusher and Ospital.

A If he couldn't, then they would have to face the issue of how much of a supersedeas bond to post. Those two things were tied together.

Q You encouraged them to cut a deal where [151] Campbell would assign his bad faith claims to Slusher and Ospital, in exchange for protecting his property, right?

A I encouraged Mr. Campbell, as my client, to do everything he needed to do to get the protection he wanted. And that was -- That didn't matter whether it cut against State Farm or anybody else. I did advise him that.

Q You encouraged them to make such a deal, didn't you?

A I sure did.

* * *

[153] * * *

Q It was in Campbell's interest to have the bond posted.

A I've told you that.

Q You were his lawyer, and you never demanded State Farm do it, did you?

A No, sir.

* * *

[156] * * *

Q But you know, Mr. Bennett, don't you, that if you admit that you were part of taking unfair advantage of the Campbells, that you could lose your license to practice law, don't you?

A Sure, I know that. And I haven't done that, because I'm not about to lose my license, sir.

Q Thank you.

A It goes far beyond my license. I look in the mirror and shave every morning, too. That's more important to me than that damn license.

Q Now, Mr. Bennett, you testified under oath when Mr. Hanni was asking you questions in the trial last year, that you had tried six to eight jury trials, personal injury cases, in Cache valley, per year for the [157] period from '69 to '83.

A I gave that --

Q That was your testimony, wasn't it?

A I gave that as an estimate, yes, sir.

Q And if we do the math on that, that's something in the neighborhood of 100 jury trials you claim you had in Cache valley in personal injury cases from '69 to the date that the Campbell case was tried; isn't that true?

A I'll take your word for it if you've done the math.

Q And even after we had the clerk of the court in Cache valley, and her staff spend over thirty hours verifying that wasn't true, you still claim it's true, don't you?

A I surely do. Because I've looked at the list that they prepared, and there were a lot of cases on it that I recalled specifically that just weren't on there. And so all I can say is that, as hard as they tried, they missed a lot.

Q You also testified you'd tried death cases in Cache valley prior to the Campbell case; isn't that true?

A I'm trying to think. I've tried a lot of death cases.

[158] Q I won't put this up until we're ready --

A I'm not positive that any of those have been in Cache County, Mr. Christensen.

Q In fact, they haven't?

A I don't know. You're asking me to go back thirty-one years, now. Whether they're in Cache County or Weber County, I can't pull that out of the air.

Q Didn't you testify in the trial last year that you had tried wrongful death cases in Cache County before with an emancipated young man --

MR. HANNI: Where are you reading from, in fairness to the witness? Let's let him look at the transcript.

MR. CHRISTENSEN: Page 993.

MR. HANNI: What line are you looking at?

MR. CHRISTENSEN: I'm looking at line 9.

THE WITNESS: I see that. That's what I did say. But I can't tell you that that emancipated man was Cache County, but they were Utah cases.

Q (BY MR. CHRISTENSEN) But you said, "Well, I had tried wrongful death cases." That's plural, isn't it, "wrongful death cases in Cache County, before, with an emancipated young man."

A And some of those well may have been in Cache County, Mr. Christensen. I'm not saying that they're [159]

not. But I can't, because the passage of time and the fact that files don't get kept forever, I can't go back and tell you this was in Box Elder or this was in Cache, or this was in Weber. I can tell you, by looking at the list the court clerk produced, that there were a lot of cases on there, because they were memorable cases, that you just couldn't forget.

Q All right, I'm going to show you the cases that the court records show. These aren't all trials, these are simply cases where your name shows up as an attorney. In fact, her testimony was most of these weren't tried, they were settled.

A That's right.

Q So show me on this first page which of these are death cases where a young man was killed.

A I can't even tell you what that Taggart-Crockett was, so that possibly could be one. But I don't even remember that case.

Q It says personal injury, doesn't it?

A Well, personal injury could be a wrongful death. I know how they keep the records.

Q You're not representing that was a wrongful death?

A I don't know if it was or not. I'm just saying that's a possibility, Mr. Christensen.

[160] Q Let me show you the second page. Any wrongful death cases on that where the person killed was an emancipated young man?

A I don't see any of those that would ring a bell.

Q How about the third page?

A I don't see any of those that would be.

Q I think that's our list from the court records.

A Well, there's nothing on there about the Gittens case, is there? Gittens-Christensen. Nothing about there, with Christofferson. Nothing on there about Masbaum. I mean that list is so incomplete, sir, that it's not even worth commenting on.

Q You're saying those cases you've just mentioned were between '69 and '83?

A Yes, sir.

Q Mr. Bennett, when we took your deposition a few months ago, you said that you would provide us with the names of the cases that the Cache County court records didn't reflect. You'd provide it the next week. I haven't seen it. Have you done that?

A I have not. Because of the press of other work I have not had a chance to do that, sir.

Q If I recall --

[161] A I said I would go through the index cards and provide you those cases that I could definitely identify.

Q And we haven't seen a thing, have we?

A No.

Q And because of -- If I recall Sharon Hancey's testimony, she said that of those cases we just saw on the screen, you tried about eight of them, and I think you lost six of them.

A Well, I would have to agree with her. I saw the Stratman case up there, where they have a defendant's verdict. Or plaintiff's verdict. It was not a plaintiff's verdict.

Q Was the case not tried at all?

A It sure was tried. Gordon Low was on the other side of it.

Q But what's troubling me is --

A And there wasn't a case up there where I tried it with Richard Richards, a very bad injury case.

Q What's troubling me, Mr. Bennett, is you say you had about a hundred jury trials in Cache valley, in that time frame. The records only show eight. Are you suggesting that the court records up there don't reflect ninety cases that you tried to juries in Cache valley?

A I don't know why the records are the way the [162] records are. Other than to tell you I can identify a number of memorable trials that are not on there.

Q But you can't identify ninety.

A Well, if I didn't have anything to do for the next thirty days I could probably do that, Mr. Christensen, but I've got other things to do.

Q Well, you've had since last October, when your testimony was called into question. Sharon Hancey testified last October to the same thing we've just seen, didn't she?

A I wasn't in court when she testified. I don't know what she testified to.

Q Are you telling me you have not seen the exhibit I just put on the screen?

A No, I saw that. You asked me what she testified to, and I said I don't know what she testified to. I saw the list, and I gave you a number of cases at that time, and I've given you some more at this time that clearly are not on there, of cases that I recall trying, because of some memorable characters in them.

Q Mr. Bennett, isn't it true there haven't been a hundred jury trials, total, of all the lawyers in Cache valley in that time frame, over personal injury cases?

A I wouldn't know.

[163] Q Certainly you didn't have a hundred.

A I may not have had a hundred, but I've had a whole lot more than you've shown.

Q And you promised you would show the records that establish that, and you haven't.

A I said I would go through my index cards and try to re-establish that. I told you then, if you want to get everything, I told you in that deposition, that the files have long since been disposed of, because you can't keep files forever.

Q But you have a case log that you said you would provide to us after you had redacted parts you didn't want us to see.

A That's correct.

Q And you haven't done it, have you?

A I have not done that.

* * *

[166] * * *

CROSS EXAMINATION BY MR. HANNI:

* * *

[167] * * *

Q Mr. Bennett, after the trial of this case in Logan, did you get a letter from Mr. Humpherys?

A I did.

Q Can you -- That letter is dated September 23, 1983, and that's within a couple of days after the verdict came in?

A Yes.

Q Can you read that into the record?

A Yes. "Dear Wendell. Though we may continue to be adversaries in the above matter, I want to write a personal note to thank you for your professional courtesies during trial. I have always considered you to be one of the best trial attorneys, and my opinion was again reinforced during this trial. The verdict against Campbell was certainly not an indication -- "

Q Indicative?

A " -- not indicative of the kind of representation Campbell received during the trial. You represented his case very well.

[168] "I look forward to working with you in the future. Very truly yours, L. Rich Humpherys."

* * *

[168] * * *

MR. HANNI: Your Honor, that letter is not an exhibit yet, and I'd like to mark that and offer it into evidence.

THE COURT: Any objection?

MR. CHRISTENSEN: No objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 139 was received into evidence.)

* * *

[172] * * *

Q (BY MR. HANNI) Mr. Bennett, let's go to the underlying case. Now, it's been brought out, here, that Mr. Noxon, by his letter of September 10, 1981, sent you the file in this case.

A Yes, sir.

Q And it has already been developed that you didn't review that file until either the 14th of September -- or you looked at it, maybe -- but the first time that you really wrote a letter about it was September 25, 1981.

A Well, I dictated the letter on the 23rd, it went out on the 25th.

Q Okay. Now, did you get another letter from Mr. Noxon in between, dated September 21, when he sent [173] you the summons and complaint?

A I did. I received that letter September 22.

Q That would be the summons and complaint that commenced this action when Mr. Slusher started the lawsuit against the Ospital estate, as well as Mr. Campbell?

A That's right, and he'd also sued a Mr. Brooks at the time, the owner of the car.

Q Brooks was the owner of the car that Todd Ospital was driving.

A Yes.

Q So he got sued initially.

A Yes, that's right.

Q Now, Mr. Bennett, when an insurance company assigns a case to defense counsel, who ordinarily, from that point on, handles the development of the evidence, to find out just what the case is all about?

A The defense counsel takes over the development of the case. He may refer something back to the insurance company to go interview a witness or something. But most often you use your own resources to do that, and you try as much as possible, if they're within the jurisdiction of the court, to get their deposition so you've got a good, clear record of what went on. But that's in the hands of the defense [174] attorney, by my experience, anyway.

Q I want to suggest for a moment, Mr. Bennett, that your letter of September 25, back up on the screen -- I'm not going to go through it in a lot of detail because it's already been shown to the jury -- this is the second page of that letter, and you'll see the next-to-the-last paragraph where you say, "I believe at the present time there is no basis to honor any type of demand for settlement made by Mr. Barrett. However, once all of the pretrial investigation has been completed, we will make a final determination of that."

Now, can you just explain what you meant by that, to the court and jury?

A Yes. Very often you will have an initial impression of a case based upon the information supplied to you, and people you might talk to, in my case, Mr. Noxon.

When I get the file and I look it over, if that is still my impression I indicate that that is my preliminary impression at that time. But that's before I've done any discovery. Because in discovery, when you're looking at witnesses, you've got to say, "Okay, how do these witnesses stack up?

Are they consistent or inconsistent? Are they believable or unbelievable? Were they in a position to know or not know? How do [175] they come across?"

So what I'm talking about there is, I've got to take all of the depositions before I come to a final determination in my own mind as to whether we do or don't have a liability case on our hands. And that's what I'm talking about. Because I have done no discovery at that point in time.

Q Well, before you took any depositions, what information did you have that you evaluated, or that you based your initial impression on?

A Before depositions were taken, I had the information that was sent by State Farm, the preliminary report, combined liability report. I had all of the police documents by that time, I'm certain, I had statements made by Mr. Campbell about what had happened, I had one from a Mr. Husbands and one from a Dr. Palmer who had some facts about occurrences shortly after the accident, but they weren't able to add anything to how the accident actually occurred. But Dr. Palmer particularly could talk about what some of the van people were doing after the accident.

I had all of those things. I had a pretty complete file, as far as the groundwork investigation was concerned.

Q Will you just tell the court and the jury [176] what evidence you did have, preliminarily, that indicated to you that Ospital was the sole cause of this accident?

A First thing was, of course, I had talked to Trooper Parker, I'd talked to Trooper Dahle, to check out what physical evidence that they had. And in my opinion, the critical scuff mark that they found, which has very peculiar characteristics, in which I've understood and come to know has a lot of validity in determining speeds of vehicles, clearly showed that Mr. Ospital had been going approximately eighty-three miles an hour when he went into that skid.

I knew that Trooper Parker had spoken with Mr. Slusher, because he had been told by some of the van people that differing stories about the pass had been made. And so he had indicated he went right to Mr. Slusher in the hospital, after he was through with his initial care, and was lucid and able to talk, and asked him if this Campbell car had caused the accident.

And I knew that Mr. Slusher said no, he didn't cause the accident, it was this Bobcat coming at a very high rate of speed that caused the accident. We had all of those things to rely on and to look at and consider.

I talked, or I had seen Mr. Campbell's [177] statement, I had talked to Mr. Campbell before his deposition was taken, and he and Mrs. Campbell were just as solid as the day is long, they had been passing the pickup truck and cam- and some of the van people didn't even know about the pickup truck and camper. Some of them said it was there, others said it wasn't. So they didn't really seem to know whether there was a pickup truck or camper.

But the credible evidence, in my mind, indicated there was a pickup truck and camper that was moving slowly, and Mr. and Mrs. Campbell in their car, with Mr. Campbell driving, decided they'd better pass that pickup truck and camper, because a lot of traffic was building up behind them.

And as they were out passing that pickup truck and camper, Mr. Campbell and Mrs. Campbell verified that they saw the Ospital car come over that north hill, which the investigating officers had established was three-tenths of a mile north of where the accident occurred.

And then, as Mr. Campbell was passing that vehicle, he got the impression, by some movements that it was making and the rate of speed at which it was closing -- keeping in mind Mr. Campbell told me he had a lot of engineering experience -- so he sped up as fast as [178] he could. He said

the pickup truck driver seemed to notice what was going on and slowed down, pulled to the right. And he pulled back in, but the Bobcat didn't slow down at all, just kept coming, and after it went by him it went over and hit Mr. Slusher.

That was basically what I had. And the strong evidence in that seemed to be that there had been a good investigation done that established what the speed was, and Mr. and Mrs. Campbell were as solid as they could be about what they had passed, being one pickup truck and camper, and not a whole line of vans.

Also the van people, as we discovered, had passes taking place all over that area, some of which have it clear up at the top of the hill, three-tenths of a mile before the accident occurs, and others have it back where the accident was.

I had to analyze all of those things. That's what an attorney does after he takes a deposition, he says, "Is this going to go, is a jury going to buy that? And how believable is it? And how much conflict is there? How strong is the police investigation? How is this going to go?"

And I honestly did all of those things. I looked at it, in my opinion the evidence showed that the cause of this accident was the high excessive speed of [179] Mr. Ospital, which apparently didn't change from the top of the hill, three-tenths of a mile from the accident, right up to the accident. And that's what I had to go on.

Q Now, Mr. Bennett, initially were you aware of the fact that there was some adverse evidence out there, that people were saying things that suggested that Mr. Campbell was involved in causing the accident?

A Yes, that was, there was some mention of that in the bodily injury preliminary report that was sent down to me, and there were a couple of paragraphs that mentioned it in the combined liability report. And then --

I have the statements of Mr. Chipman and Mr. Gerber, of course, and knew what Trooper Campbell had said, and Trooper Campbell told Mr. Summers that when his statement was taken. And so I knew that was out there.

Q Is it uncommon, when you get a case assigned to you, to have suggestions that there may be evidence adverse to your client?

A It happens all the time. I'm glad to see all of the good, the bad, and the indifferent. I think you need to see all of that.

Q Now this preliminary report from Mr. Summers [180] was in the file that you got from State Farm?

A It was.

Q And in addition, you got a CLR, did you not?

A I did.

Q Now, I want to show you, Mr. Bennett, paragraph 5 of the combined liability report. And I want to ask you, in that report, whether there was any suggestion at all that Mr. Campbell was at fault.

A There was.

Q Do you recall that?

A Pardon?

Q Do you recall the combined liability report, and do you recall any reference in paragraph 5 of any suggestion that Mr. Campbell was at fault?

A Yes, there is a suggestion in paragraph 5, and there's a suggestion in paragraph 16.

Q And basically what does paragraph 5 have to say?

A Well, if you'll put it up, I have read files, a lot of files. If you could put that up I could dovetail it in, Mr. Hanni.

Q All right, here we go. We'll put -- Do you see the paragraph that starts out --

A "We do have some conflicting evidence"? Is that the one?

[181] Q Yes.

A Yes. "We do have some conflicting evidence involved, in that those who were apparently following behind the claimant number 2," which would be Mr. Slusher, "going north, and possibly a part of the traveling group going to the Bear Lake area, entered the opinion that the passing vehicle set up the whole chain of events which resulted in the accident."

Q And did you take the passing vehicle to mean Mr. Campbell?

A Yes, I did.

Q And in paragraph 16 of that same CLR, is there also some reference to there being some fault on the part of Mr. Campbell?

A Yes, sir.

Q Let's see if I can pull that out for you. If we read from the point where it says, "I presently feel -- " Do you see where that is?

A Yes, I see that. "I presently feel that the proximate cause of the accident lies with the negligent acts of the claimant, and do not, at this point, agree to the imputing of negligence to our insured. It may be that we will have to re-evaluate this position if and when other witnesses' testimony comes to light, and after -- "

[182] Q "And alters."

A "And alter our basic position."

Q So does that suggest to you that there may be evidence out there that implicated Mr. Campbell?

A Yes, sir.

Q What did you do, then, to try and check that out, and to evaluate it?

A Well, I reviewed the information we had available through the police statements, what Mr. Summers had done with Trooper Parker with his statement, and then tried to identify who those van people might be.

I also was aware, because I saw a transcribed statement of Dr. Palmer, who was behind the Slusher vehicle -- didn't see the accident, but was there after, and rendered some of the assistance, and observed the van people coming back -- I was aware that it was his impression that one of them would say, "It happened this way," and another would say, "It didn't happen this way, it happened that way." And they were changing their stories and trying to come up with some kind of a consistent story. I knew that.

So my plan was, okay, get the investigation done, get the reconstruction done, talk to Trooper Parker, make sure I understood what he had to say, and [183] verify the correctness of my understanding. Get these van people, I wanted to depose Mr. Slusher -- that was delayed for some time because he was back in Kentucky with his family recuperating -- so even though I tried to take his deposition in, like October, it wasn't until March of the following year we could do that.

And I met with Trooper Dahle a couple of times, trying to get the information we had, and look at what it really was going to lead to and show, and did all of those kinds of things.

Of course I talked at length with Mr. Campbell and Mrs. Campbell prior to their deposition to satisfy myself what kind of witnesses they were going to make in this case.

Q I'll show you, Mr. Bennett, this Dr. Palmer statement which you have talked about. Do you see the portion of that where, down to where it starts off, "What were some of the accusations that you observed or heard?"

A Yes, I see that.

Q Can you read that, then, Mr. Bennett?

A Yes. "There were more stories going on that night than I could believe. Everybody had seen it first hand, and I thought I had, and I really couldn't say myself. And there

were people claiming they saw things [184] in the rear-view mirror, and there were people claiming one and another. And the thing I wanted to tell the highway patrol was that everybody had a story, and we sat around that night, and after we had pretty well -- Everybody had a story, and we sat around that night, or story to tell the highway patrol --" Now, have you got the hard copy of that, Mr. Hanni? I --

Q Let me see if I can get you one.

A That is so close together.

Q Let me read it for you. I'm closer than you are.

A Okay, that's good.

Q "Everybody had seen it first hand, and I thought I had, and I really couldn't say myself. And there were people claiming they saw things in the rear-view mirror, and there were people claiming one thing and another.

"And the thing I wanted to tell the highway patrol was that everybody had a story, and we sat around that night, and after we had pretty well, after the highway patrol got there and we weren't needed, like to treat injuries or be with other people, they kind of got together and started talking their stories over.

"And people that said, "No, it happened this way," and they'd say, "Oh, is that the way it [185] happened?" And the stories were really wild. And there was one guy there that swears, where it was different from the rest of it. He said he saw the whole thing, and he was right behind the van, and that somebody, that there was some real crazy driving going on, and there was stories both ways. One blaming the van and one blaming the Bobcat.

"But I asked this fellow to stay around and tell the police, and then he wasn't any place to be found by the time the police got there. He was a big, six-foot-three inch to six-foot-five inch, and he was either colored or Hawaiian, but he swears he saw the whole thing. And some of the guys

that were in with the van group, they had, they thought they had seen it, and they even had different stories among themselves, so that's the thing. Everybody had a story, and I don't know how valid any of them were."

That is the statement you were talking about?

A That is, and I had read that with the file when I was doing my analysis to try to determine credibility.

* * *

[186] * * *

Q Now, Mr. Bennett, you have told us about what Mr. Slusher told the investigating officer about a week after the accident.

A Yes, sir.

Q And basically he told the investigating officer, he was asked, "Was Mr. Campbell involved in this accident? Or was he, did he contribute to it?" And Slusher's statement was what?

A He said, "No, he did not. The passing car had nothing to do with it. It was the Bobcat."

Q In the minds of a defense lawyer, when you're evaluating a case, or any lawyer involved in the trial of a case, when you get a statement like that coming from the person who is injured, tell the court and jury just what kind of weight you put on that.

A Well, I put a lot. Because it's what I believe is referred to as a statement against interest. It would be in his interest to say, "Yes, it was the Campbell car that caused this, and the oncoming car."

But Trooper Parker said, you know, "Did this passing car cause anything?"

And he said, "No, it was only the oncoming car."

[187] So that would be -- It was inconsistent with what he was then claiming in his lawsuit, because he had joined

Mr. Campbell in that lawsuit at that time. So that's what I was looking at. It was total absolving of Mr. Campbell of any responsibility when he talked to Trooper Parker a week or so after the accident.

Q And you, I think you've told us, because Mr. Campbell was named as a defendant in the case, that you assumed Slusher would change his story about that.

A It seemed that he had to, because if he admitted that that was the case at the time we took his deposition, of course he would possibly have his lawsuit dismissed on a motion for summary judgment, based on his own statement that Mr. Campbell had had nothing to do with this case.

Q But even though Mr. Slusher later denied that he had said that to the officer, does that evidence still come in? Did it come in before the Logan jury?

A It came in, and also Mr. Slusher's claim was, "Well, I must have been under heavy doses of Demerol." So we checked that out, we checked his hospital chart, and he hadn't had a Demerol shot for a long time, and he wouldn't have even had any effect of Demerol in him at that time. And we also checked with Trooper Parker to make sure that he was lucid and coherent, and he [188] confirmed that he was.

* * *

[192] * * *

Q Now, in one of the letters that Mr. Christensen put up, you made some comment in that letter that, about the plaintiff's so-called expert. What did you mean by that comment?

A Well, Mr. Humpherys had told me he had an expert that was going to disprove every that [193] Trooper Parker had done, and Trooper Humpherys, or Dahle, had done. And that's why I'm referring to him as a so-called expert. And there was said in that, and I can't you what it was, that led

me to believe it was going to be Mr. Watkins that was going to be their expert. Because I was aware of Mr. Watkins having testified in cases like this before. And so I wanted to point that out to State Farm and to Mr. Campbell.

Q And did you feel it was significant that Mr. Watkins had not had the opportunity, like Parker and Dahle, to actually see the physical marks on the highway after the accident?

A I thought it was. My experience has been that the person who actually is at the scene and sees the marks fresh and measures them up has a whole lot better opportunity to determine what went on than someone who's doing this in a vacuum. Or off from photographs.

Q Now, Mr. Bennett, coming back to Slusher's deposition, what did he tell you on his deposition?

A He basically, the bottom line, and I'll never forget this as long as I live, he says, "If Campbell hadn't tried to pass all six of those vans, Ospital would be alive today." And then basically he went and described that.

[194] In his deposition he said he hadn't actually seen Mr. Campbell pass him, but he saw him after he was ahead of his van and Chipman's van, as I recall, passing all of the other vans. But that's what he said at that time, which was just absolutely contrary to what he'd told Trooper Parker in the Logan Hospital.

Q And on his deposition, then, in March of '82, with Mr. and Mrs. Campbell sitting there, he testified that Mr. Campbell had passed six vans.

A Yes, he did.

Q Mr. Bennett, did you view that as credible?

A Well, no, I viewed it as incredible, for several reasons.

Q Tell us what your reasons were.

A Well, number one, it was so contrary to what he told Trooper Parker. Number two, it was totally contrary to what he told Mr. Campbell. And number three, for a vehicle to

pass six vans in that area, keeping in mind, as you go out of the bottom of the Dry Lake, you're ascending a pretty doggone steep hill, I don't believe you could even make that pass of six vehicles in that area, in a car like he was driving.

And then I'm looking at this gentleman, sixty-two, sixty-three-year-old gentleman, it was just inconceivable to me that he would do anything like that. [195] And he swore up and down that that was not a correct statement, and that Mr. Slusher was not telling the truth on that. He and Mrs. Campbell both did after the deposition.

Q Was there ever any evidence that Mrs. Campbell ever protested, or said anything to Mr. Campbell at all during that pass?

A No, sir, there was never any evidence of that in pretrial discovery or the trial of this case.

Q Did that fact, the absence of anything being said by her, did that have any effect on your judgment?

A It sure did.

Q Tell the court and jury about that.

A Well, I was impressed that Mrs. Campbell was the type of person, had she perceived any danger at all in what they were doing, she would have warned Curtis Campbell. My interaction with them led me to believe that, much like my relationship with my good wife, if I'm doing something that she thinks endangers anything, she tells me all about it. Which I appreciate.

Q Did the lack of Mrs. Campbell protesting have some effect on your eventual analysis of this?

A It did.

* * *

[200] * * *

Q (BY MR. HANNI) Mr. Bennett, when you got through with the depositions of the van drivers, those that you did take, what was your final assessment of the liability aspect, plus when you got through with your reconstruction?

[201] A My final conclusion is that the van people were so inconsistent that they did not make good witnesses. The reconstruction, I felt, established clearly that Mr. Ospital had been traveling eighty-three miles an hour, nearly thirty miles over the speed limit, had been doing that for that full three-tenths of a mile into where the accident occurred from the top of the hill.

Even with a clear view that a car was passing at the bottom. And at eighty miles and hour, you know, you're going forty five feet a second faster than you would at fifty-five miles and hour. In other words, at eighty miles an hour you go to 120 feet a second. Whereas at fifty-five, you go eighty-six, eighty-seven feet a second. So that's closing a lot faster.

So my feeling was going to be, or was -- and I expressed this -- that Mr. and Mrs. Campbell made very good witnesses. Their testimony was believable. It was born out by, or the testimony about the speed of Mr. Ospital made by Mr. Campbell was substantiated by the on-scene investigation done by Trooper Parker and verified by Trooper Dahle.

The pass, I felt a jury would conclude was reasonable, because when he pulled out and started his pass, there was no, no danger to him at all. The road [202] was clear from him to the top of the mountain. At least three-tenths, more than three-tenths of a mile, because he's passing this.

This, my analysis was this whole thing was set up when Mr. Ospital came over that hill thirty miles over the speed limit and did nothing during that three-tenths of a mile, to decrease that speed. And that Mr. Campbell did everything he could to get back into traffic.

And I thought, with all of the factors you had, with that regard, and with what I evaluated those van people, which was confirmed by what Dr. Palmer had noted there at the scene that night, that they were not very believable. They had tried to piece together a story, and they weren't really sure what it was. And it was just all over the hill.

So my evaluation was that a reasonable Cache County jury was going to find Mr. Campbell's pass was reasonable, and that this accident was caused by Mr. Ospital.

* * *

[208] Q Mr. Bennett, now, I want to go into a different area. When you got down to the point where you're getting ready to try this case, you have told the court and the jury that you met with the Campbells on August 30 and then on September 7 or 1983.

A Yes.

Q Now, will you tell the court and jury just what you told the Campbells on those occasions about the trial.

A Yes. They came into my office, they had been gone for eighteen months. I wanted to bring them up to date on everything I knew at that point in time, including the van drivers' depositions. Of course, they had been present when Mr. Slusher's deposition was taken back in 1982.

So we went through that. I, by that time, I had received a letter from Mr. Barrett demanding policy limits and Mr. Humpherys demanding policy limits within a very few days. I didn't send them to them in Minnesota, because I knew they were in transit and I wanted to make sure they saw it.

So I gave them those. I went through the testimony by deposition of the various van drivers. I tried to explain it exactly as I understood it. I had the outlines of the depositions that Mr. Christensen was [209] showing you. We went through this.

I asked them again, "Are you sure that you were only passing a pickup truck and camper? Is there any doubt that you could be mistaken on that?" They assured me that there was no doubt.

We did talk about what I saw as their exposure, and I gave them my honest opinion at that time as what I saw was their exposure in this case. I told them, as far as Mr. Ospital was concerned, I didn't see any exposure, because I thought, based on the evidence we had from independent credible witnesses, the highway patrol investigators, that a jury would find that Mr. Ospital had caused this accident.

I did mention, though, that because they had been making a pass out there in the Dry Lake area, that a jury could conclude, well, if hadn't been out there passing that day, this wouldn't have occurred. But I felt that was a minor possibility, and I didn't think it would happen.

But I pointed out, and I think for our figuring, we used 5 percent, and we used a $100,000 verdict for Mr. Slusher, so as to point out that, okay, at 5 percent, $100,000. That would mean your share of this is $5,000.

We talked about the fact that Mr. Ospital had [210] the two policies of insurance, had $130,000 available to him, and so I thought there was plenty of coverage.

I did mention to Mr. Campbell again, I said, now, "You know, you can't always tell what a jury's going to do. There's always some risk involved here. You may want to consult with another attorney. I have no problem with that. You've been told a couple of times that you can do that. If it will make you feel more comfortable, by all means do it."

But I gave him my honest assessment of the case at that time, and he advised me that he didn't want the case settled, he wanted to go to trial, he had done nothing wrong. And Mrs. Campbell verified again, too, that what she had told me was absolutely correct, and they had done nothing wrong to cause that accident.

So that, in a nutshell, is what went on.

Q Now, Mr. Bennett, when you met with the Campbells, did you make them aware of the fact that both Ospitals and Slushers -- and I'm talking about in August and September of '83 -- that you had offers to settle within the limits?

A Oh, yes, I gave them copies of the letter that Mr. Barrett wrote on behalf of Mr. Slusher and Mr. Humpherys wrote on behalf of the Ospital estate, setting out that both of those parties would settle for [211] the policy limits of $25,000.

* * *

[221] * * *

Q Now, you say you had 235 State Farm cases.

A Yes.

Q Are you able to make some estimate as to what percent was in what counties?

A Weber was the heaviest, Cache was the next. Probably Box Elder and Davis would be the balance of them. Weber I think I had the most in, Cache was the second most, and Davis and Box Elder would be about equally divided.

Q Mr. Bennett, is there another case that you know is a Cache County case that does not appear on the list on Exhibit 42?

A Well, I know there's the Masbaum-Masbaum. I know there's the one with Richard Richards with that goofy spike.

Q What about a case called Gittens or Gettens?

A Yes, there was the Gittens versus Lynn Val Christensen, and there was also a case where a Christofferson, I represented up there. The reason I remember that is because the Logan judge was a Christofferson. And I wondered if it was a relative, and then discovered it was different spelling of Christofferson.

[222] But the Gittens versus Lynn Val Christensen is one indelibly in my mind, because of what happened in that case.

Q Well, will you tell the court and jury when the Gittens case, this event occurred that indelibly imprints it in your mind. What's the time frame?

A Okay, that case came down to me in June of 1981. I took Mrs. Libby Gittens, Elizabeth Gittens--she went by Libby -- on September 9th, 1981.

Q Now, that's in the time frame very close to when the Campbell case is going. Could you -- According to Noxon's first letter, September 10 is when he sends you the file. Right?

A That's right. So on --

Q September 10 of '81?

A That's right.

Q All right. So September 9, 1981. Go ahead and tell the court and jury what happened.

A That was a case where Mrs. Gittens was trying to set aside a release that she had given to State Farm. And in that file, as it was sent down to me, were some medical bills and a wage statement that supported a payment that had been made by State Farm to Mrs. Gittens.

Her deposition was scheduled and taken on [223] September 9, 1981.

Q And did you do that?

A Did I take the deposition?

Q Yes.

A I did.

Q And where were you when you took that deposition?

A The law offices of Hillyard and Low.

Q And that's where?

A In Logan.

Q All right. So what occurred on that deposition?

A Mr. Summers was with me for that deposition, as I recall, and I --

Q Now, you're talking about Ray Summers?

A Ray Summers, who was a local claims adjuster, because this was a lawsuit that involved a release he had taken, and the bills that were in this file.

I start showing these bills to Libby Gittens, and she says, "I've never seen that bill before. That's not my, I didn't go to that doctor. I went to another doctor." I gave her her lost wage statement, she says, "I didn't miss those days from work. I missed other days."

Q So what you say, a lost wage statement. What [224] did you have there?

A Well, it was a statement by her employer saying that she worked, she made this much money, but she hadn't been to work on these days because of this accident. And that was, that supported part of the damages that State Farm had settled with her.

She appeared to be a real credible witness, and very straightforward, and I'm sitting there with these releases, or the medical bills and this wage statement, and she's saying, "They're not mine. I've never seen those before."

So what I did was took a recess and took Mr. Summers in an adjoining office and I says, "Ray, what is going on on this thing? You heard her." And that's when I found out that Ray Summers had forged those medical bills and wage statement, which he said he knew what they were, but he didn't have his file documented, and so after he'd made the settlement, he prepared those in his office.

Q And how many different statements did you have? You've talked about a wage verification?

A There was a wage verification, there was a radiology report where a radiologist read an X-ray, there was a Logan Regional Hospital, there was a pharmacy. I think that was it. There were four items, [225] including the wage statement.

Q Now, this is on September 9, 1981.

A Yes, sir.

Q The day before Noxon wrote his letter of September 10, sending you the file on this Campbell case.

A That's correct.

Q So what did you say to Mr. Summers when he -- What did he say to you when you faced him with these things?

A Well, he said, "It was just easier to do this. I had been told what the bills were, I just needed to document my file, so I put them in there."

And I said, "Why didn't you tell me that? I mean here I am, I've got these marked as exhibits in this deposition, you have compromised Mr. Christensen, you have compromised State Farm, and you have compromised me, basically. I just can't believe that you would do this, Ray."

And I says, "I'm going to go back to Salt Lake and I'm going to pick up the telephone and I'm going to call your supervisor and I'm going to tell him."

Q Who was your supervisor?

A Bob Noxon was the superintendent, his [226] supervisor.

Q All right.

A I said, "You'd better get on the phone while I'm on my way back to Salt Lake and call your supervisor and tell him what you have done. Because you have done something that has just raised cane in this case, basically."

And so that's where I left Mr. Summers. I was ticked, to say the least.

Q Did you then go back to your office in Salt Lake?

A I did.

Q And did you talk to Mr. Noxon about it?

A I did.

Q Did you tell him what happened?

A I told him exactly what happened.

Q Now, after that, what happened?

A Well, after that, the week following that, I received a call that they wanted me to take Ray Summers' sworn statement relative to the Libby Gittens matter to find out exactly what it was, so we'd have it under oath and could deal with it appropriately in handling Mrs. Gittens' claim.

So that was a Wednesday, I was in Logan on the 9th, so the 18th, Friday, the 18th, Mr. Summers came [227] to my office --

Q Again, this is September 18, 1981.

A Yes. Came to my office in Salt Lake, with that file, Christensen was the insured, Gittens was the claimant, and I took his sworn statement under oath about what had gone on in that case with him reviewing his file.

Q And did he testify any differently in that sworn statement than he had said to you when you called him on it on September 9 up in Logan?

A Basically he gave me the same information, told me that he had done this, I think it was like back in June or July of 1980 or '79. It had been a while. And he didn't get his report in, he didn't get his report in, his supervisor was after him to get the report in and close it out, because he had a check out there that he'd paid Mrs. Gittens with, but no supporting data.

So he said he found it, because he didn't have the bills, he found it easier just to make them up. Because he says, "I keep blank bills in my desk drawer that I take out and make up to come up to what I needed to say, put them in the file, and close my file."

Q Who requested that you take the sworn statement from Mr. Summers?

[228] A It was either Mr. Noxon or Mr. Brown, who was the divisional superintendent at that time. As I recall, Mr. Brown got involved in it because of the serious nature of what Mr. Summers had done.

Q Now, you took the statement, then, from Gittens, which was on September 18.

A I took it from Summers on September 18.

Q I mean Summers. Sorry. And you got the summons and complaint, so we've got September, 1981 is the date of the Gittens deposition.

A Yes.

Q And it's on that day you find out those medical bills and wage verification had been forged by Ray Summers.

A That's the day, yes.

Q And it's that day that you told him to call his superintendent and tell him, because you were going to call him when you got back to Salt Lake.

A That's what I told him, yes, sir.

Q And on this day, September 9, is when you did call Bob Noxon and tell him what had occurred in the Gittens case.

A I called him immediately upon my return to Salt Lake, yes.

Q And it's on September 18, 1981, that you took [229] the sworn statement from Summers.

A That's right.

Q I'll mark that here, Summers statement. When -- What was the date of Noxon's letter when he sent you the summons and complaint in this Campbell case?

A His letter was dated September 21, received by me September 22.

Q So September 21 is when the summons and complaint was sent to you.

A Yes.

Q Now, to back up, here, it was Noxon's letter of September 10 -- and I'll write that in here -- 1981, when the file was sent to you, the Campbell file.

A That's right.

Q I'll mark that "Campbell file." Now, I'd like you to describe for the court and the jury, what was Ray Summers' reaction when you faced him with these forged documents in Logan when you were taking the Gittens deposition?

A My impression was that he was very embarrassed by it, was just really surprised that it had come out, and he was apologetic for not having told me, you know, attending the deposition with me, not telling me going into the deposition what was going to come up [230] in that deposition because he'd forged those bills.

He appeared to be just really, now, beside himself. I guess that's as good a term as I can do it, just like somebody that's been caught with their finger in the cookie jar.

* * *

[Vol. 20, R. 10275, commencing at p. 26]

* * *

WENDELL E. BENNETT the witness on the stand at the time of adjournment, having previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION BY MR. HANNI

* * *

[27] * * *

Q Mr. Bennett, last Friday we put some numbers and some dates, I should say some dates on the board, having to do with the case of Gittens against Christensen, a Cache County case that you were handling.

A Yes, sir.

Q And we put on the board September 9, which was the date you took Mrs. Gittens, the plaintiff's deposition.

A That's right.

Q Now, prior to that deposition, had Mr. Summers' deposition been taken in this same case?

A It had. He gave his deposition, I believe, [28] on September 4, 1981.

Q That would be September 4, 1981?

A Yes, sir.

Q And this would be Summers?

A Yes.

Q Were you present at that deposition?

A I was.

Q And who was representing Mrs. Gittens, the plaintiff?

A Hillyard and Lowe was the law firm, and as I recall, Lyle Hillyard took Mr. Summers' deposition.

Q I want to show you the cover page of that deposition.

MR. CHRISTENSEN: Your Honor, I'm going to object to this. This has not been produced to us. We have never seen it. We produced it to you?

MR. HANNI: Yes, you did.

MR. HUMPHERYS: I can't confirm one way or the other on that.

MR. CHRISTENSEN: That is your mark, not ours.

Q (BY MR. HANNI) Mr. Bennett, I have up here the title sheet of Mr. Summers' deposition, and it shows it was taken on the 4th day of September, 1981.

A That's right.

[29] Q And you were present at the time of that deposition?

A I was.

Q Now, during that deposition, Mr. Summers was under oath, was he not?

A He was, yes.

Q And did he testify about a settlement that had been made with Mrs. Gittens? And you already told us about the fact that on September 9, five days later, you took Mrs. Gittens' deposition, right?

A That's right.

Q And did Mr. Summers, on the day of his deposition, was he asked about the basis for the settlement with Mrs. Gittens, and was he asked about the medical expenses and the loss of earnings that you also asked Mrs. Gittens about five days later?

A Yes. The same documents had been produced, and were available to Mr. Hillyard when he took that deposition, which were the releases that Mrs. Gittens had signed, the medical bills that the payment of expenses was based upon, and the car damage that it was based upon. And so Mr. Summers was asked about all of those exhibits that we had produced in discovery in that case, yes, sir.

Q Now, the settlement with Mrs. Gittens [30] consisted of -- Can you see the items up there? Is that too far away?

A Yes, there was $495 for car damage.

Q All right, $495 for car damage.

A There was a $42 bill to the Logan Hospital.

Q $42 for the Logan Hospital.

A There was $14 to Medical Diagnostics.

Q $14 to Medical Diagnostics.

A There was a prescription bill for $8.30. And then there's some loss of wages that he put in there.

Q And the loss of earnings comes to $88.40?

A Yes, $88.40.

Q So we've got loss of earnings of $88.40.

A Yes.

Q Now, the total of that settlement -- Let me put another sheet on here that'll help you with that. Do you see at the top of the page?

A Yes. The total, when they added up, or when you would add the car damage of $495 and those medical bills that he was being asked about, and the loss of income he was being asked about, amounted to $647.70. Which was the amount he paid her and took a release from her.

Q Now, Mr. Bennett, Mr. Summers, was he under oath at the time he gave that deposition?

[31] A Oh, he definitely was under oath, yes, sir.

Q And are the items that I have listed here on the board the same items, that is the Logan Hospital, the Medical Diagnostics, $8.30 for a prescription or something, and the loss of earnings, are they the same items that you asked Mrs. Gittens about five days later?

A They were the exact same items, we were looking at the same bills.

Q And did Mr. Summers, at any time in the course of his deposition, tell Mr. -- I think you told me Mr. Hillyard was taking the deposition?

A Yes.

Q Did he ever tell Mr. Hillyard that he had forged these receipts for these various items?

A No, he did not.

Q Was his testimony in such a frame that these were legitimate expenses? Was that the essence of what he said?

A That, and the basis for why he paid the $647.70. You add all of those together to the car damage, and it comes to that exact amount. So to make the equation close, yes.

Q And then five days later, on September 9, you took those same items of expense, when you took Mrs. Gittens' deposition -- And you've already [32] testified that Mr. Summers was there when you took Mr. Gittens' deposition?

A He was, yes.

Q And he let you ask her all about those expenses, and I think you've testified you went through each one and she said, "I didn't incur that expense with Logan Hospital." Is that what she said?

A That's right.

Q And she said, "I didn't incur this $14 with Medical Diagnostics"?

A That's what she said.

Q And she said, "I didn't lose any time at work"?

A Not that much time, and they were different days than were on the lost wage statement.

Q And Mr. Summers, during the course of Mrs. Gittens' testimony, never did tell you that he had forged these various receipts.

A He did not.

MR. CHRISTENSEN: Your Honor, this whole line of questioning has been leading, and I'm going to impose an objection.

THE COURT: Sustained.

Q (BY MR. HANNI) After you had Mrs. Gittens', after you had asked her about all of those items, was [33] that when you had to go out in the hall and talk to Mr. Summers about that?

A Yes, it is. I had two totally inconsistent stories given by two people about those same bills five days apart, under oath, and something in my stomach just said, "Something's wrong, here."

Q And you testified to that in detail on Friday; is that right?

A Yes, I did.

Q Now, Mr. Bennett, there's been some testimony around here about the number of cases that you had, that you have tried in Cache County. I want to ask you, was this Gittens case, was that a Cache County case?

A It definitely was.

Q And I want to call your attention to the Exhibit 42, which is the exhibit that the county clerk, Mrs. Hancey, made, when they rolled all of those docket books in here on the dollies. Is the Gittens case on that Exhibit 42?

A No, it is not.

Q Are there -- Now, you talked about, on Friday, a case involving a lady that was coming down Logan Canyon that had a ski rack on the back of her motor home.

A Yes.

[34] Q And you told the court and jury on Friday that a young man on a motorcycle hit the back end of that motor home and actually impaled himself, that is he ran one of those ski spikes right through his neck. Did you describe that Friday?

A Yeah, the ski rack spike, is what it was. A ski rack on the back of the van, he ran into the back of this motor home -- I'm calling it a van, it's a motor home -- on his motorcycle, threw himself up on there and impaled himself with that ski rack spike right under his chin and into his neck, and was impaled there and holding on to the back of the motor home, yes.

Q And is that case listed -- Was that a Cache County case?

A It was a Cache County case, yes, sir.

Q Is that listed on Exhibit 42?

A It's not there. I don't recall the name of the parties, there. I just recall the name of the attorney. It was Richard Richards. I recall that very clearly, because I've known Mr. Richards since college, and I recall the case very interestingly, or very clearly, and it was a very interesting case because of that unique set of facts. But no, it's not on that list, because nowhere does Richard Richards' name appear along with mine.

[35] Q Are there other cases that you can remember that do not appear on Exhibit 42?

A Yes, there was a case that came down, the Christofferson case, and I mentioned Friday that I was concerned because it was filed in that First District, and Judge Christofferson is the judge, it came down at the same time the Christensen case did, in the list I have given you all. You can see that they follow each other.

And it is not on there. It's Christofferson versus Blair. And it's not on there. There is the Masbaum case, that was a case that happened between Bear Lake and Logan, where a Mr. Masbaum had been drinking and was involved in an accident and injured his wife, Mrs. Masbaum, and that case was pending up there. And it's not on this list.

Q That's Exhibit 42 you're talking about?

A Yes. It's just not on there. And another one that just strikes me as strange on here is a case that's on, it's Rupp versus Nelson on the next to the last page, or, no -- No, next to the last page, they've got a Brent Moss on there. I'm not aware of a Brent Moss that has ever practiced law. And as I look at that, I believe that probably should be Brent Hoggan. So that's, because I recall having cases with [36] Mr. Hoggan.

Once again, I knew Mr. Hoggan from college, we lived in the same student housing at University of Utah, married student housing, a number of years ago. And so you know, those just jump out at you.

Q Have you counted the number of cases that you did have, State Farm cases, between 1975 and 1985?

A I did. After Friday, and you know the question, why didn't I prepare the list, I worked this weekend and prepared the list, and handed it to you and Mr. Christensen this morning. And I said 235 on Friday, and there are actually 237, I had missed two cases.

Q And where were those cases pending?

A Those would have been in the northern part of Utah. And I can't do any better than tell you what the percentages were in my best estimate, and Cache County would be 30 percent of them. Weber County was the biggest county and most cases out of Weber County, next was Cache, then Box Elder and Davis were about a toss-up, and I don't recall ever having one in Morgan County or Rich County, which are also up in that northern area.

Q And that was between 1975 and 1985?

A Yes, those are the only ones I have available. I do not have the records of the first ten [37] years of my practice, which was with your law firm, Mr. Hanni, but there were a number there. And that's only State Farm cases. You know, in that ten-year period, I opened up 2,143 cases, of which 237 were State Farm cases. So I can --

MR. CHRISTENSEN: Your Honor, I'm going to object and move that that be stricken. We asked this witness back when his supplemental deposition was taken on April 24th of this year to produce his log of cases. He said he wouldn't do it because it was privileged, but he promised he would redact the parts he claimed privilege and produce it the next week, and he didn't do it. And now he's trying to use figures from it. I object and move it be stricken.

MR. HANNI: Well, Your Honor, it was brought up specifically by plaintiff's counsel last Friday that Mr. Bennett hadn't done this.

Q (BY MR. HANNI) And Mr. Bennett, did you do this over the weekend at my request?

A I did. And I felt Mr. Christensen thought it was very important that he have it, so I took the time and did it.

MR. CHRISTENSEN: My point is, he still hasn't produced the log that he promised months ago.

THE COURT: I'm going to sustain the [38] objection and grant the motion to strike.

MR. HANNI: That's all.

THE COURT: Mr. Schultz?

MR. SCHULTZ: Your Honor.

CROSS EXAMINATION BY MR. SCHULTZ:

* * *

[42] * * *

Q Now, was some of that evidence that you received, depending upon the credibility of the witnesses and the other investigation, but was some of that evidence potentially harmful?

A Yes, it was.

Q To Curtis Campbell?

A Yes.

Q And that documentation has survived in the file?

A It surely has in mine. Everything that went in my file stayed in my file.

Q And the documentation that you got from State Farm survived in its file?

A It did.

Q Does the presence of that potentially harmful evidence in the file, Mr. Bennett, does that sound like [43] the kind of documentation that an insurance company that was destroying adverse evidence would want to leave in a file?

A Not in my opinion. If you were trying to sanitize the file, you definitely would not want those factual things in the file.

Q You were also asked some questions, Mr. Bennett, regarding the deposition summaries that you prepared in the Campbell case. Do you recall that?

A I recall being questioned about that, yes.

Q Now, and you've explained how those deposition summaries were prepared by your office, correct?

A I did.

Q Did those deposition summaries include a summary of the testimony of the witnesses, both favorable and unfavorable to State Farm?

A Yes, it did.

Q And did you send those deposition summaries on to the insurance company?

A I sent the deposition summaries and the depositions on to the insurance company.

Q And to your knowledge, those summaries have survived also?

A Yes.

[44] Q With respect to Mr. Slusher's deposition summary, did you include in that summary the testimony that he claimed Mr. Campbell was at fault for the accident?

A I surely did.

Q Did you include that he thought Campbell had passed six vehicles at one time?

A Yes.

Q And did you also include in your summary that he could be a dangerous witness if he was believed?

A Yeah. I think clearly in my memo to myself, which used a little of my barnyard language, and I think in the summary itself I set that out.

Q Okay. And that summary in your file, or your note to yourself in your file, that wasn't destroyed, was it?

A No, sir, nothing was destroyed.

* * *

[46] * * *

Q Now, did State Farm tell you to destroy that document out of your file?

A No, they did not.

Q Did they tell you to destroy your deposition [47] summaries?

A No, they did not.

Q Are you certain about that, Mr. Bennett?

A I am positive about that.

Q Because the assertions in this case are that State Farm tells people to destroy all their adverse documents. So are you certain that they didn't tell you to destroy those?

MR. CHRISTENSEN: Your Honor, he's been leading this witness for at least ten minutes. I've let it go, now he's gone beyond that to give him arguments and speeches, and I have to object.

THE COURT: Sustained.

Q (BY MR. SCHULTZ) Are you certain, Mr. Bennett?

A I am certain that neither State Farm nor any other insurance company I've done defense work for has asked me to destroy any portion of my file.

Q Did Strong and Hanni tell you to destroy any of your file?

A No, quite to the contrary.

Q What were you told?

A Well, when, I believe that both Mr. Hanni and Mr. Burton called me early on --

MR. CHRISTENSEN: Your Honor, this is [48] hearsay. It's also, they've claimed privilege when we've asked him about his conversation with Strong and Hanni. But in any event, it's hearsay.

THE COURT: Sustained.

* * *

[53] * * *

Q Now, you were shown a document that's in evidence, here, the Excess Liability Handbook, which you said you'd never seen before, right?

A That's right, I've never seen that book.

Q But you were read some parts of that manual regarding the fact that lawyers were not to put evaluations in writing if the case might involve a verdict in excess of the insured's policy limits. Do you recall that?

A I recall that.

Q Was it your experience, during your time of handling cases, for State Farm, that you were told to do that?

A No, sir.

MR. HUMPHERYS: Your Honor, I would just like to register an objection. Mr. Schultz is plowing through much of the ground Mr. Hanni went through Friday afternoon. And in light of the time, I would just object on the basis of repetition.

MR. SCHULTZ: I don't think Mr. Hanni went through this stuff, Your Honor.

THE COURT: I'm going to overrule the objection, but I'm being quite mindful of how long [54] you're going. Please get through as quickly as you can, Mr. Schultz.

MR. SCHULTZ: All right.

Q (BY MR. SCHULTZ) Now, Mr. Bennett, since 1985 you said you haven't been receiving case assignments from State Farm any further; is that right?

A That's correct.

Q Have you had any experience where represented a plaintiff, or a claimant who was making a claim against State Farm?

A Yes, sir, many of them.

Q And have you had to deal with State Farm claims adjusters in those cases?

A Yes, I have.

Q Have you also had to deal with attorneys retained by State Farm to represent their insureds in those cases?

A Yes, I have.

Q And what has been your experience during that time frame in those types of cases in dealing with State Farm or their retained attorneys?

A My experience is that State Farm has tried to evaluate liability, tried to evaluate damages, which I V24 have tried to do as a plaintiff's attorney against them. They have been accessible

to me to sit down and say, [55] "Let's discuss this, here's what I see." And they come back and say, "Here's what I see."

And if we haven't been able to come to a compromise between those two parameters, we go to trial. But my experience with them, as with other insurance companies in this area, have been that you try to settle them, you get most of them settled, but those you can't, you agree to disagree and you go to trial.

Q Okay.

A So I would say that, even though I have no great love for State Farm because of the termination of that twenty-year relationship, it hasn't slopped over into that area at all. They've treated me professionally, and I've tried to treat them professionally.

Q Okay. I've got just a couple of other areas I want to ask you about, Mr. Bennett. One of the points that was made to you on your direct examination with respect to this hypothetical insurance company was that such a company might want to have counsel or others write letters that wouldn't truthfully express exposure or potential liability. Do you recall that?

A I recall those questions, yes, sir.

Q Now, Mr. Bennett, on June 21st of this year, Ray Summers testified in this courtroom, and he gave [56] testimony about several areas that he said were unfair claims practices that he engaged in, and he gave some case examples of how these unfair claims practices were used.

Now, I'm going to read to you his testimony regarding one of those files, Mr. Bennett, and then I'm going to ask you a couple of questions about that. This begins on page 230 of Mr. Summers' testimony. He says, "One very flagrant file involved an insured by the name of Thad Carlson, who had a son that had an emotional break and attempted in the family's car to commit suicide. At a high rate of speed he crashed into a cement abutment and did nothing more than total the car.

"He had minor injuries and was hospitalized for it. But because of the nature of his being distraught, he was placed in the psychiatric unit of the hospital under psychiatric evaluation, as well.

"He, the following day, walked away from the hospital, walked about two blocks to his family residence, and got in another family car, drove up Logan Canyon, and at a distance up the canyon, at a relatively high speed, went left of center and hit another vehicle head on, killing two people in that vehicle. The insured driver was uninjured and walked away from it."

Question. "This is this fellow, who?"

[57] Answer. "That would be Scott Carlson, their son."

Question. "Okay. And he was the State Farm insured?"

Answer. "Thad Carlson, the father. Scott walked about, oh, several hundred yards east of that accident scene, and as a large semitractor-trailer came down the canyon at a relatively high rate of speed, the boy dove under the wheels of the semi and suffered very minor injuries. Well, not minor, fractures, was hospitalized in that condition. Technically three different accidents. I reported them verbally by telephone call to my superintendent."

Question. "Who was who?"

Answer. "I believe Tom McGlinn was the superintendent at the time, and told him we had a very severe exposure. And he said, 'Do nothing on the file. It's an intentional act. The boy intentionally tried to do harm, therefore there is no coverage.'

"I said, 'Wait a minute, the boy is ill, he was hospitalized for a mental break. He was not cognizant, aware of what he was really doing.'

"He said, 'Follow my instructions.'

"I talked to the named insured, Thad Carlson, with whom I was personally acquainted, and told him that [58] there was a coverage question because of an intentional act of an insured, and I needed to get a non-waiver, which I obtained from him, to submit to the company for their review to see if they would or would not extend coverage.

"I was instructed to not offer even the PIP benefits under each of the three instances, because they were three separate accidents. I was told not to discuss with the insured or anyone else relative to the involvement of the accident. I was told to remove from the file the photographers of the accident scene, which never were included in the file. The diagram that was prepared, to my knowledge was never included in the file.

"I was also told not to offer any opinion as to possibility of coverage, but to downplay, withhold the evidence from the insured, and in particular not to disclose or divulge any content to the claimants that were involved with the fatality."

Mr. Bennett, are you familiar with that claim?

A Now I hear that testimony, I can remember that case, because it was a very peculiar fact situation. Very unfortunate, yes, sir.

Q Mr. Bennett, were you asked to give State [59] Farm a legal opinion in that case regarding coverage?

A I recall being asked to do that, yes, sir.

Q Let me show you a couple of letters, one dated December 16th, 1980, and one dated December 29th, 1980. Can you identify what those letters are? Who they are from and who they went to?

A Well, they are from me, and they went to H. Thomas McGlinn at State Farm claims in Ogden. Mr. McGlinn was the superintendent up there at that time.

Q Now, without going through all that's in those letters,

Mr. Bennett, I'd like you to refer to the December 29th, 1980 letter, and just read to the jury what your advice was to State Farm regarding coverage.

MR. CHRISTENSEN: I'm going to impose an objection. These are also letters I haven't seen.

MR. BELNAP: Your Honor, this was --

MR. SCHULTZ; The copies were given to you yesterday.

MR. BELNAP: This was in the file that was delivered at their request.

THE COURT: Overruled.

MR. HUMPHERYS: -- But may we look at them now? They were in a box like this, and we didn't have a chance to review the entire box last night when they[60] gave it to us.

MR. SCHULTZ: Sorry.

MR. CHRISTENSEN: Your Honor, one of these is a six-page legal opinion. It's not feasible for me to read through this while everybody sits.

MR. HUMPHERYS: Can we just approach the bench for a minute, Your Honor, and maybe we can resolve this?

THE COURT: All right.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Are we getting close?

MR. SCHULTZ: Yeah, we are.

Q (BY MR. SCHULTZ) I'm not going to put these as exhibits into evidence, but at this time, at least, I do want you to just tell the jury what your legal opinion was regarding whether there was coverage, liability coverage for Mr. Carlson.

A Okay, my opinion was that even though Mr. Carlson was obviously suffering from a mental disability at the time of the accident, that as far as an injured third party was concerned, that would not be a defense, and that State Farm should step forward and pay the claim.

Q Now, according to what I read you from [61] Mr.

Summers' testimony, he's testified that Mr. McGlinn said to him, "It's an intentional act, and don't do anything," or whatever. Okay? You heard me read that.

A I heard that.

Q So the advice you were giving is inconsistent, at least, with what Mr. Summers said Mr. McGlinn wanted to hear, right?

A I would say it's 180 degrees opposite.

Q Now, do you know how that case ended up, as far as the liability claims were concerned?

A My recollection is that State Farm settled all of them.

Q Do you know if they paid the limit, or less than the limit, or do you recall?

A I can't tell you what totally they paid. I expressed my opinion, and I recall that the cases were shortly thereafter settled.

Q Okay. You were asked several questions about the supersedeas bond, Mr. Bennett.

A Yes, sir.

Q Do you recall that?

A I do.

Q And I just want to put one letter up here on the screen, and have you confirm -- Is that a letter dated December 23rd, 1983, from Mr. Hoggan to you?

[62] A It is.

Q Mr. Hoggan was representing Mr. Campbell at that time?

A Yes, he was.

Q Can you read the second paragraph, there?

A "Under these circumstances, I believe that we could only make a final determination as to the need of the supersedeas bond after that meeting, or as soon as we are able to obtain some type of a commitment from them as to their willingness to withhold execution pending appeal."

Q And the meeting he's talking about is the one that's up in the first paragraph that they've scheduled for January 6th?

A Yes, that's correct.

Q With counsel for Mr. Slusher and the Ospitals?

A Yes.

Q Is it your understanding, Mr. Bennett, that a supersedeas bond would be necessary if, or would have been necessary if Mr. Campbell was able to reach some kind of an agreement with Mr. Slusher and the Ospitals that they would not execute?

A It was my opinion that a supersedeas bond would not be necessary if that agreement had been [63] entered into.

* * *

[66] * * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

[68] * * *

Q All right, I want to ask you about a couple of these. Now, you've testified it became apparent to you in taking Libby Gittens' deposition on September 9th of 1981, was it?

A Yes, uh-huh.

Q That Ray Summers had been dishonest, had falsified documents in the Gittens file.

A He admitted that after we went out in the hall of Mr. Hillyard's office, yes, sir.

Q Well, let me cover that while we're at it. You said he went out in the hall, you confronted him, you explained Friday the look on his face and how he acted and so forth.

A Yes, sir.

Q In your deposition you said you went into an office in Mr. Hillyard's place of business and called [69] Mr. Summers; isn't that true?

A That was my recollection, best recollection at that time. But after I looked at his sworn statement, you know, it could have been either way. But my recollection is that he was

there. I think I explained the look on his face as when I took his sworn statement a week and a couple of days later, Mr. Christensen, down at my office in Salt Lake.

Q You explained the look on his face. Isn't that what you said Friday?

A But I very well could have said that.

Q But in your deposition you said you called him on the phone. You said you were in Logan and he was somewhere else?

A I was thinking he was in Logan and I called him from Mr. Hillyard's office, and called him at his office. But the more I think about it, the more I remember he was there, because I remember that kid with the hand in the cookie jar look on his face.

Q So you're changing your testimony?

A Yes, that's my best recollection.

Q Let me see if you're changing your testimony on this. You also said that Mr. Summers had told you he'd not only done it in the Gittens file, but he'd done it in a number of others, too, didn't he?

[70] A That's right.

Q And that's still your testimony.

A Yes, sir.

Q So at least as of this date, you knew Mr. Summers had been falsifying documents, not only in the Gittens file, but in a number of others.

A That's what he told me.

Q And you knew that Mr. Summers' dishonesty had been a factor in Mr. Summers getting the Gittenses to sign a release.

A Well, I don't know that it was a factor in having them sign a release. It surely compromised the situation to defend Mr. Christensen in that case. I know what he claimed. He claimed that he knew what those bills were, but didn't have them,

and Mrs. Gittens was supposed to bring them in and she didn't bring them in, so he sat down and made them up so that the numbers in the check he gave her would match with some actual bills.

Q But you knew he'd been dishonest in the Gittens file.

A I knew he had forged those bills in the Gittens file, yes, sir.

Q But knowing that, in August of '82, almost a year later, State Farm, through you, still tried to [71] enforce the release that Summers had obtained dishonestly, didn't they?

A If you've got the file, let me look at it and I can refresh my memory, Mr. Christensen. You've looked at something I haven't seen for about fourteen years, now.

Q Well, I'm going to show you your request for admissions and interrogatories to plaintiffs. That's your firm on it, Bennett, McDonald and Belnap?

A That was at the time.

Q And they're dated August of 17th of 1982?

A Yes.

Q Do you see request for admissions 2 and 3, where you ask Mrs. Gittens to admit she signed a release?

A Yes.

Q And you did that for the purpose of trying to enforce that release, even though you knew it had been dishonestly obtained, didn't you?

A You make a distinction, "dishonestly obtained." According to even Mr. Summers' testimony, she had told him she had incurred those bills. It was actually, without the bills she got more money than she was supposed to.

I didn't think the release had been [72] dishonestly obtained. I thought Mr. Summers had been dishonest with his employer, State Farm, out of laziness, probably. Too lazy to go get the bills, so he made them up. But he, in fact -- She

did, in fact, have bills, she came back on the second release with more bills and he paid her another check.

Q Mrs. Gittens said she'd been deceived in that case, didn't she?

A Mrs. Gittens said those were not her medical bills.

Q Well, let me read you what she wrote in response to your request for admissions through her lawyer.

A Okay, I haven't seen that for fourteen years, so read it to me.

Q She admitted she signed a release, admitted, "But I did not have time to read it before signing. Mr. Summers, State Farm adjuster, came to the Smithfield Implements Store where I was working and gave me the check that I needed to pay for a replacement car. He gave me the document in question," which would be the release, "and told me I had to sign it as a release for the car payment, but that it left all my medical claim open.

"I relied on Mr. Summers' representations and [73] was under pressure from work and the need to pay for the car, so I signed without reading or checking with anyone on what this document really was."

Does that refresh your memory?

A If that's what it says there, that's what it says. I can't tell you what's in that document fourteen years after I saw it last.

Q And that doesn't surprise you a bit that Summers would have misrepresented something to Mrs. Gittens, does it?

A Well, that's why I suggested State Farm pay some more money and get that case settled, which they did.

Q Only after you tried to get her claim thrown out for signing a release, and the judge denied that, right?

A Let me see the file again. Let me see if we filed a motion. I don't know if we did or not this far back, Mr. Christensen.

Q Certainly the pleadings I've shown you suggest that State Farm was trying to enforce that release, don't they? Let me refer you to the answer you filed. I think it asserts the release as a defense?

A If you want me to answer the question you've asked Mr. Christensen, let me answer that one, rather [74] than let's get another one on the board. Which do you want it?

Q Well, I think we can short cut this.

MR. HANNI: Your Honor, I think the witness, if he's going to be asked about a file, he ought to be given the chance to review it. He hasn't seen that in fifteen years.

THE COURT: That's what he's doing, Mr. Hanni.

THE WITNESS: No, I didn't file a motion for summary judgment based on what she did. We wanted to establish that she had received the money, you can see the checks attached to it, we wanted to establish she had signed the releases, they were attached to it. But we did not take any action for a summary judgment. We settled the case with Mrs. Gittens.

Q (BY MR. CHRISTENSEN) But you did raise in the answer that she'd signed the release.

A That's right. Remember, now, what's the date of the answer?

Q June 18, '81.

A And it's September that I find out that Mr. Summers had put these bills in the record to match up with the check.

Q Mr. Bennett, did State Farm settle on [75] September 9th or 10th, 1981 with Mrs. Gittens?

A No, sir.

Q Didn't settle until two years later, did they?

A What's the date of the stipulation and order of dismissal? That's when the case was settled. It was negotiated settled before that, but that's the day it was ultimately signed by Mr. Hillyard and myself.

Q It was, the stipulation and order of dismissal was signed October 10th, 1983 by you and Mr. Hillyard.

A Okay.

Q So it was two years later.

A That's right.

Q And it was after that time you sent Mrs. Gittens, and after you'd taken this depo, you sent Mrs. Gittens requests for admissions trying to get her to admit she signed a release, and that was part of your efforts to enforce that release, wasn't it?

A She didn't ever deny that she had not signed a release, Mr. Christensen.

Q But she did say she'd been deceived into signing that?

A That's what she said in the responses to requests for admissions and the answers.

[76] Q And State Farm tried to take advantage of that.

A No, after that we settled.

Q Two years later.

A Well, what's the date of the request for admissions? You're mixing those up with the deposition, Mr. Christensen.

Q You want the request for admissions date, or the date she answered?

A The date she answered.

Q She answered on September 9th, 1982.

A Okay.

Q And you settled about a year and one month later.

A That sounds right. If that's what the stipulation and order of dismissal says.

Q Mr. Summers didn't get anything, personally, out of what he did to Mrs. Gittens. That's clear, isn't it?

A That was my understanding, he had not profited by that.

Q But State Farm tried to.

A I don't think so.

Q All right, let me move on to the Christofferson case you mentioned. You couldn't [77] remember the plaintiff's name. Does Allen Blair sound right?

A Blair, yes, uh-huh. If you look on the list I've given you this morning, you'll see that.

Q Mr. Blair had some fairly serious injuries, didn't he?

A To tell you the truth, I can't recall the facts of that case, Mr. Christensen. If you'd let me look at the file I could refresh my memory, if you want to take that much time.

Q I'll let you take a look at it. I'm going to refer you to your motion for summary judgment based on a release Summers got signed.

A Okay.

Q Summers got the plaintiff in that case, Mr. Blair, to sign a release, and Mr. Blair claimed that he'd been deceived by Summers into signing that, didn't he?

A Let me go through the file. Like I say, this is fourteen, fifteen years old, sir. I've handled a lot of cases since then. Yes, it looks like Allen Blair's wife signed an affidavit that Mr. Lowe had prepared for her, and that Judge Christofferson felt that there were issues of fact yet to be resolved in that case, and denied the motion for summary judgment.

[78] Q In your motion, was State Farm trying to say to Mr. Blair, "You signed a release, you can't even pursue your claims"? Isn't that true?

A That's usually what happens when people sign releases. They release all of their rights. That's -- Releases are given, and money paid to settle claims.

Q But my point is, Mr. Blair claimed he'd been deceived in signing that release, didn't he?

A Mrs. Blair, in her affidavit, seemed to imply that, as I quickly read that. I have no recollection of it, other than what I read today.

Q And Mr. Blair's response to his motion for summary judgment --

A It was written by Mr. Lowe, I believe.

Q Yes, written by Gordon Lowe, he said, "The release in question was supplied by Ray Summers, an agent for State Farm Insurance. When the release was executed, it was executed on the basis of a friendship and trust and understanding long established between Ray Summers, the insurance agent, and the plaintiff and his wife."

And it goes on to explain how they trusted Summers, and felt like they'd been misled, and were asking that the court not allow the release to prevent Mr. Blair from pursuing his claims as a result; isn't [79] that true?

MR. SCHULTZ: Your Honor, I'm going to object to this. These cases were brought up on cross examination to rebut the clerk's testimony that she had an accurate list of every case Mr. Bennett had ever filed or been involved in in Cache County. We have not tried to go into the facts of those cases.

It's unfair and it's misleading to now start picking things out and trying to ask this witness to talk about a case that he's never even seen for years and years. We've not been told these cases were going to be brought up, we haven't been given copies of any of this, and I just think that it's, under Rule 403 it shouldn't be allowed, and under -- It's beyond the scope of cross.

MR. CHRISTENSEN: He's the one that brought the cases up, and these are public record. This is not a situation where we've got files they don't have access to. These are sitting right in the Cache County clerk's office.

MR. SCHULTZ: And it was brought up to show that her list was inaccurate, Your Honor. That's the only reason. Not to get into the facts of every case. Now, if we're going to do that --

THE COURT: I'm going to sustain the [80] objection. I think it's beyond the scope of cross, and it's going to protract this matter.

Q (BY MR. CHRISTENSEN) Didn't you testify this morning that State Farm did not mishandle these cases that Summers brought up?

A I don't understand your question, Mr. Christensen.

Q Well, it's not a very good question. Didn't you testify just this morning that State Farm made it right by these people that Summers had taken advantage of?

A Well, I said that the cases proceeded, and we ended up paying, I recall, Mrs. Gittens more money. Here again, I think you misstate the fact that Mrs. Gittens told Mr. Summers she had those medical bills, he just didn't have documentation of it. So he documented his files to match up with the money he had paid her. I'm not saying that there was any evidence that he misrepresented to her. He misrepresented to his employer what had gone on.

Q But you've just seen the evidence.

A I looked at the file for -- I don't see where you're going with it, and I --

Q The judge has sustained the objection, so in fairness, I'll move on.

[81] A All right, thank you.

Q Let me follow up quickly -- I'll skip that. Now, Mr. Schultz asked you if you'd seen the Excess Liability Handbook, and I asked you that too and you said no. But it is true you put no evaluation in writing in this file of the likely verdict, isn't it?

A I believe in the file I indicated that I felt there would be a verdict in favor of Mr. Campbell, so that is an evaluation in and of itself.

Q You never provided a number of the likely verdict or verdict range in this file, did you?

A As I said, because I didn't feel it was a liability case, I did not.

Q So your answer is that you did not do that.

A My answer is exactly what I stated, sir.

* * *

[89] * * *

Q (BY MR. CHRISTENSEN) All right. Let me move to another area. Now, you spoke with Mr. Summers in September of 1981, and he admitted to falsifying documents in the Gittens case, and also told you he'd done it in a number of other cases.

A He admitted that in cases he did not have the bills to document what he had paid out, in order to document his file, he would make up those bills.

Q That was September, '81.

A Yes, sir.

Q And you certainly reported that to Mr. Noxon, didn't you?

A I definitely did.

Q The jury has seen this on the screen before, this is the Tenth Circuit opinion, in Mr. Summers' lawsuit against State Farm. The opinion is dated 1988. I'm going to refer you to the underlined part.

It says, "In early 1986, nearly four years after Summers' discharge, State Farm, when preparing for trial, made a thorough examination of records prepared by Summers and discovered over 150 instances where Summers had falsified records," and so forth.

Let me show you one other page. Also, where [90] I've underlined on page 705. It says, "In support of its argument that evidence of Summers' pervasive misconduct discovered in 1986, which State Farm did not know about when it discharged

Summers in 1982," and it goes on to talk about a legal issue that's not at issue here.

You told State Farm management back in September of 1981 Summers was doing this, didn't you?

A I reported to them what Mr. Summers had told me, and then I took his sworn statement after that, yes, sir.

Q Did you ever report Summers to the insurance commission?

A I did not.

Q Did you ever report State Farm to the insurance commission for his conduct?

A I did not.

Q Now back in this time frame, this '81 time frame, you were having several conversations a week with Summers, weren't you?

A I think probably before the Libby Gittens deposition that would be true. I don't know if it was several a week. But if there were things up there, investigations I wanted done, statements I wanted taken, I would surely call him and say, "This needs to be [91] done," or I would write to him. There was quite a bit of communication with myself and Mr. Summers, and myself and other adjusters, with State Farm and other companies I represented.

Q Now, Marilyn Paulsen, who is still an employee of State Farm, testified earlier in this trial that she reported to State Farm management as early as 1970 that Summers was falsifying documents. Do you have any reason to dispute that?

A How would I know? I wasn't there. My office is in Salt Lake. Their office is in Logan.

Q But you handled many, many files with Ray Summers, didn't you?

A I sure did.

* * *

[96] * * *

RECROSS EXAMINATION BY MR. SCHULTZ:

* * *

[98] * * *

Q (BY MR. SCHULTZ) You were shown a part of the Summers versus State Farm decision from the Tenth Circuit Court of Appeals, Mr. Bennett, just a minute or two ago?

A Yes, I think Mr. Christensen put up two different pages of it.

Q Okay. Mr. Bennett, you're familiar with the fact that you reported the Gittens situation to Mr. Noxon, right?

A That's correct.

Q Okay, let me just show you a portion of this opinion. The Tenth Circuit starts out by reading the facts, here, saying that they were not seriously disputed by Mr. Summers, okay?

A Yes.

Q If you refer up here, it says, "In September, 1981, State Farm discovered evidence regarding a 1977 incident where Summers had falsified various medical and pharmacy bills and so forth." That's the Gittens case, isn't it?

A Yes, it is.

MR. HUMPHERYS: Objection, Your Honor. It's a leading question, first of all.

MR. SCHULTZ: Well, Your Honor, I think we've [99] already got this in evidence. I'm just trying to lay the foundation.

THE COURT: All right, we've been through it at least twice before, before this jury, so just get to your question and ask it, and let's get this witness off of here.

MR. SCHULTZ: Okay.

Q (BY MR. SCHULTZ) Mr. Summers, or Mr. Bennett, excuse me, do you see here where it indicates that Summers was advised not to falsify, was warned, and that ultimately he was placed on probation, if you look down here?

A Yes.

Q Okay. And were you aware, Mr. Summers, or Mr. Campbell -- Mr. Bennett.

A That's all right, I get called a lot of things.

Q Mr. Bennett, I won't put it up here, but were you aware that in his own case, Mr. Summers took the position that State Farm did not know about these additional 150 falsifications that were found in 1986?

MR. CHRISTENSEN: I'm going to object to this as leading. This is beyond this witness' knowledge, I'm sure.

THE COURT: Sustained.

[100] THE WITNESS: I've read that opinion, Mr. Schultz.

Q (BY MR. SCHULTZ) Did you read the opinion?

A I try to read all of the Utah Supreme Court opinions that come down, I try to read all the Utah Court of Appeals decisions that come down, and all of the Tenth Circuit cases appealed out of the district courts of Utah. So I'm aware of that case.

Q Are you aware of the position Mr. Summers took in that case?

A I read that, yes, sir.

Q With regard to the 150 falsifications?

A Yes.

Q What was his position?

A Basically that they were not known by State Farm at the time he was discharged, therefore State Farm should not be allowed to rely on them.

MR. SCHULTZ: That's all.

THE COURT: Mr. Bennett?

MR. CHRISTENSEN: Very briefly, I need to follow up.

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

[102] * * *

Q Okay. Moving to another area, Summers told you in September of 1981 that he'd not only falsified documents in the Gittens file, but he'd done it in a number of other files, as well, didn't he?

A Yes, sir.

Q And you reported that to State Farm management.

A I assume I did. I know I told them about the Gittens case because I was really torched off about that. And I would assume that I probably mentioned that [103] he had said that, as well.

Q Now, you claim to know about the Campbell opinion to the Tenth Circuit.

A That's the Summers opinion to the Tenth Circuit.

Q Right, excuse me. Isn't what Summers was really saying, through his attorneys, is that because State Farm claimed they didn't know about those other files, they couldn't have used that as a basis to fire him four years before?

A Well, as I recall reading the opinion, he's saying they didn't know about it, so how can they rely on it?

Q He's saying they claimed they didn't know.

A And there were some cases cited from different circuits, as I recall that, that went both ways.

Q Isn't it true that not only did Summers tell you he'd done it in a lot of cases, but do you see this stack of Summers depositions taken in 1983 to '86 that State Farm took?

A If you tell me that's what they are I'll take your word. I surely haven't read them, nor do I have any desire to.

Q He admitted falsifying files in those, didn't [104] he?

A How would I know? I haven't read them, sir.

Q I thought you knew about that case.

A I read the opinion. I didn't read the depositions.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF SAMANTHA BIRD, JUNE 28, 1996

[Vol. 16, R. 10271, commencing at p. 80]

* * *

SAMANTHA F. BIRD called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q Please give us your full name.

A My name is Samantha Fay Bird, B-I-R-D.

* * *

Q Have you been employed by State Farm in the past?

A Yes, I have.

Q During what years?

A From 1980 until 1991.

Q And were you terminated, or did you voluntarily leave?

A I voluntarily left.

Q While working at State Farm, what positions did you hold?

A I was initially hired as a claim handler, [81] claim investigator, after three years I was promoted to a supervisor over the same area, and then four years after that I was promoted to a claim superintendent, still in auto accident claims.

* * *

Q Now, during the last, was it five years you were working as a superintendent?

A Yes. The last five years I was a superintendent.

Q Who was your immediate superintendent?

A Bob Noxon.

* * *

[82] * * *

Q Now, Ms. Bird, while you've been working at State Farm, did you try to honestly evaluate all claims that came under your jurisdiction?

A Yes, I did. That was my job.

Q And did you always try and fairly evaluate them?

A I felt I did, yes.

Q And did you teach those under you to do the same?

A Very much so.

Q Such as Felix Jensen, who was under your direction; is that right?

A Yes.

Q And did you try and teach your unit to always pay the full amount and the fair amount to the claimants as they submitted claims?

A Yes, very much.

Q And did you try and ensure that they did it, through reviewing their files?

A Yes.

Q Now, was there a time while you were superintendent -- Well, let me back up by way of preface. Let's see, those under you would typically [83] have a lower dollar amount where they could settle it within their authority?

A Correct.

Q Say, around $7,500 I think Felix said he had.

A Correct.

Q And then you had authority to settle any claim within your dollar amount, that was $15,000.

A At the time, yes, uh-huh.

Q And then if you had a claim with value in excess of your $15,000, you had to go above you?

A Correct.

Q And you couldn't settle without getting authority of Mr. Noxon?

A No, the check could not be written. You couldn't settle it without somebody else's authority.

Q All right, now, as the superintendent, when there were claims that were submitted for authority above your $15,000, did you have difficulty with Mr. Noxon giving you the authority needed to pay on those claims?

A Very often.

Q Now, in this, during these times when you would have a problem getting authority to settle these claims, were there times when Mr. Noxon specifically ordered you to change your evaluation to a lesser [84] amount?

A Yes, there were times.

Q Did he even ask you to change your report?

A Yes.

Q And to rewrite it?

A Yes.

MR. SCHULTZ: Your Honor, for the record, I will renew an objection we've made in the past, Rule 403, 404, and 406.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Now, Ms. Bird, were these cases simply a difference of -- In these cases where you would submit authority, were they clear cases, where the amount that was being requested needed to be paid, or were they just one of these gray areas, question marks?

MR. SCHULTZ: Object, leading.

THE COURT: Sustained.

Q (BY MR. HUMPHERYS) Did you have occasions when you requested authority when the amount you were seeking was a clear indication that needed to be owed?

A Yes.

Q Or needed to be paid? Excuse me.

A Yes.

Q And did he refuse to give you authority in [85] some of those cases?

A Yes.

Q Would you give an example to the jury of the kind of case that illustrates what you have just said, that the damages would clearly be owing and the authority you were requesting was clear, and really not in a gray area?

A I remember --

MR. SCHULTZ: Can we have a continuing objection on that, Your Honor?

THE COURT: You may.

THE WITNESS: You have to understand, I probably went to authority for Mr. Noxon fifteen, twenty times a week, and this was a recurrent, running theme. He wouldn't do it on every file, but it was a recurrent theme over the last five years that I worked with him.

I recall specifically, I was gone on medical leave in the end of '90 and came back in January of 1991, and another superintendent had been submitting my files for me while I was out. And she and the claim rep came back to me as soon as I got back and said, "Here are some files where our policy limits were only $25,000 per injured person, and they are clearly worth more than that, but Mr. Noxon would only give fifteen. He was mad at your claim representative at the time." Which [86] happened to be Clark Davis.

And the superintendent, the other superintendent, knowing Mr. Noxon and what went on, said, "I'm sorry but I knew you were coming back, and I didn't make the fight for them, so here they are."

And this was relatively how we worked these types of disputes, is I would either go in and say, "This is what they're worth," and we'd argue back and forth and I would refuse to budge, or if I submit them in written form and left, he would call me in and we might make the rounds, whatever.

But I went in and talked to him, and he still stood firm on his ground. He never gave you a lot of specific reason. For example, he wouldn't say, "Well, in this case I think you've missed, you've misinterpreted what the witness' power would be," or, "You've misinterpreted this fact or evidence."

It was always, "Well, your claim reps don't work very hard. You guys aren't doing -- This is too much money for this guy." I could never pin him down to something I could go back and learn from, or change, or say, "Yes, you've got a point I overlooked that."

In this particular instance I held firm, saying these injuries clearly exceed the policy limits, I need the full $25,000 and he was still quite firm in [87] saying, "No, I'm only going to give you fifteen."

And so I would, over the years I came up with different ways to get the money that I needed. And one of the ways that on these particular files of Mr. Davis', I went to, I've forgotten his official term, house counsel I believe it is Richard Sprately, who was here in Salt Lake with us, he's an in-house attorney, and said, "Richard, I need your help. Look at these, tell me if I'm out of line, and if I'm not I need you to call Mr. Noxon and put some pressure on him."

And Richard looked at them and said, "They're clearly worth the policy limits." He would call up and discuss things with Mr. Noxon, and he got the authority. He got the approval. And there were many others I could give. If you want to hear them.

Q (BY MR. HUMPHERYS) I'm sorry?

A If you want to hear them, let me know.

Q We've heard many, I don't want to go into a lot. I just want to have the jury understand the flavor of the experiences you were having with Mr. Noxon. Was there a time when he asked you to rewrite a combined liability report, or a CLR?

A It was not a combined liability report, it was a claim committee report.

Q A claim committee report, sorry.

[88] A Right. Asking for, I believe at the time it was $50,000. Any time my request for money exceeded his, he would then have to go to his boss to get this money. And the way they did that was usually through a claim committee report.

So it would have had to have been in excess of $50,000, because I believe his limit was fifty. This had been a claim that had been active and alive for a couple of years, and all along we had been assessing that it was going to need to pay more than $50,000, and everyone was reporting it so, and on and on.

I wrote up the report, and a claim committee report is a very detailed analysis of the accident, skid marks, you know, sun in somebody's eyes, the entire investigative report of the accident, a detailed medical analysis, "Did our guy break his arm and is he a concert pianist? Or does he work on the telephone?" You know, a real analysis of his injuries, his medical bills, how he's hurt, future damages.

And then subjective things like, "If we take it to trial, this is a very strong witness, or this is a very weak witness." So it's a full, it was a multi-page, they run anywhere, normally from three to twelve to twenty pages, whatever you need to get through all this.

[89] But I had written it up, and we clearly owed more than the $50,000, I felt, the claim representative felt, all these years. And I went to him and I said, "Okay I need you to submit this to your boss, Pete White," I think it was back in Bloomington, Illinois, at the time, "because I need this money. It's time to pay it."

And in true Mr. Noxon form, he ranted and raved, and said, "Well, I just got off the phone with Pete," and Pete White's kind of an intimidating personality himself, and he said, "Pete just chewed my rear because we're not trying enough cases." So take this back and rewrite it all, and say we need to defend it, not pay it."

And I said, "I can't do that, Bob. I don't think we need to defend it, I think we need to pay it. We felt that way through the entire life of the claim file, how can I just change my mind midstream with no support? Again, give me some facts, tell me what I'm missing, tell me what I'm overlooking that I can agree with you that, yes, we need to take this one to trial rather than pay."

And if you understand the running feud I had going with him about these kinds of things, it was he would yell and scream, and I would say, "No, I'm not [90] going to do that." And his management style is sort of marine drill sergeant, up front and in your face and at the top of his lungs. But if you just stood up to him, quite often you could wear him down, and you got what you thought was the proper decision.

So we went at it for a long time and I refused to change it. I said, "I can't. It makes no sense, number one." And I asked him, I said, "All right, I change it, and you go to trial with this case, and they find our insured is guilty of the accident and guilty of causing the injuries, and the injuries exceeded the policy limit," and I said, "Our insured turns around and sues us for mishandling his case. They're going to put me on the stand and say, 'You were the management person most involved with this file, you've lived with it every month for the last two to three years, what made you feel this was a case that should go to trial, versus one we should pay?'"

And I said, "What would I tell them? What would I say?"

Q And what did he say?

A Well, his answer was, he thought for a while, but his answer was, "Well, you'd tell them that accident investigation is a very subjective thing, and it's, there are shades of gray and that you felt that the [91] witness maybe might not have been right, and you could just tell them that since these are not given very strong items, that in your opinion you felt this was totally defensible.

Q What did you reply?

A I said, "I can't do that." I felt, what they paid me for was my opinion on these claims. Now, if they chose to do something different, that's entirely within their right.

But I said, "If you don't agree with me just write it down in the file you don't agree with me and you want me to defend this, and I will defend it, but I can't change my opinion, and I won't."

Q And what did he reply when you asked him to write down in the file that he was disagreeing with your opinion?

A He never voiced a direct objection, but he and I both knew that was something he couldn't do.

Q To write down that kind of thing in the file?

A Correct.

MR. SCHULTZ: Your Honor, I'm going to object and move to strike. The witness is testifying what somebody else knew, and that's speculation, and without foundation.

THE COURT: Sustained.

[92] Q (BY MR. HUMPHERYS) Has it been your experience, Ms. Bird, while working at State Farm, or what has been your experience working at State Farm, whether you document disputes regarding this kind of thing that you've just described? What has been your experience?

A My experience has been that you are taught not to do that. You don't argue out differences of opinion in a file in written form.

Q When there is a dispute or a request to rewrite or change evaluations, is that ever done in writing that stays with the file?

A No, I've never seen it.

Q Now, at about this time, was this about the time period when you were getting ready to leave, or were making the decision to leave State Farm?

A It would have been probably around in the 1990s sometime, and I left in the middle of '91.

Q All right. Now, during this period of the early nineties, were you ever, did you have any conversations with superiors above Mr. Noxon, or with Mr. Noxon, about your own performance, whether you were fitting in, whether you were a team player, that kind of thing?

A Well, my performance evaluations always came [93] back very well. They were always that I had no problems, or very few, and there was never a problem there.

What would happen is, I was housed in the same building with this man, and since we saw each other quite often, trying to get authority and talking about staffing and et cetera, we would be together all the time.

And over the course of the last three years, especially, of my employment there, I would consistently be told that I didn't fit in, that I didn't play the management game, that I was different than the others. That I remember him saying one time, "You're the only one I have this trouble with. You're the only one that argues back with me."

I remember on another occasion where he said, "I treat you differently than I do the others because you give me grief." And he said, "I don't even treat you like I do the others."

I was consistently told, "Why don't you act more like superintendent Leon Maxwell?" I can't tell you how many times I heard that one. Who was a well-regarded

superintendent in our area. I got comments like that all the time, that I'm the only one that he has this problem with.

[94] * * *

Q (BY MR. HUMPHERYS) Does Exhibit 137 represent documents which were part of the State Farm working business while you were there?

A I'm sorry, say that again?

Q Are the documents in Exhibit 137 documents which you obtained while working at State Farm?

A Yes, they are.

* * *

[96] * * *

Q (BY MR. HUMPHERYS) Were all of the documents in 137, documents which came to you in the normal course and business of a supervisor and employee of State Farm?

A Yes, they are.

Q Now, what I would like to draw your attention to is that time period in the spring of 1990. We have had a chance to look at the, what we have referred to as the Bird memos, and they're becoming quite famous, by the way. Do you object to having your name associated with those?

A No. If I'd known they were going to be so important I would have typed them better.

Q Now, we've talked about a meeting in the spring of 1990 regarding the destruction of documents. The jury's already seen the memo that you sent to your unit members. We want to lay just a little bit further foundation on that. But would you relate the substance of that meeting, why it came about, who was present, [97] just the general background, so we know what was going on at the time.

A I don't remember if it were a typical monthly management meeting. By that, I mean all the State Farm Auto and homeowners' company management in the state of Utah,

we typically had those once a month. It could have been one of those, it could have been a special meeting called, because we had some visitors from our regional office who had some messages to impart.

But I don't know which ones they were. But at any rate it looks like the entire management of the state of Utah got together and discussed many things, as you would in a monthly management meeting. And one of the items that we discussed was put on by Janet Cammack, who was a claim attorney three or two, or something like that, at the time.

Q Now, Ms. Bird, what I have done is I have put page number 2 to Exhibit 137 on the screen. Is this what would be considered a part of your electronic communications at State Farm? This isn't an electronic, but is this a written copy of your electronic communications?

A Yeah, it's a Xerox copy of our E-mail of how we communicated with each other.

Q All right. Now, is there any question in [98] your mind that this is a replica of the E-mail communication that's been printed?

A No, not at all.

Q Does it follow all of the various codes and names and so forth that is unique to State Farm's system?

A Yes, it does.

Q Now, here it indicates, "To." Are these all of the management of Utah that you recall, except for those that came from Denver, or excuse me, from Colorado?

A I don't know if it's all of them, but the person that took the memo, the minutes at the meeting, and later transcribed them and sent them out, that's who she chose to direct the copy of the minutes to. And in all probability it was probably everyone in Utah that was there at the time.

Q All right. The subject says, "Staff meeting minutes, April 5, 1990." The date of the communication was April 11, 1990?

A Correct.

Q Okay. Now, did you receive your copy of this electronic communication?

A Yes.

Q Did you make a co[illegible]of it?

[99] A Yes, I did.

Q And did you keep it with you when you left State Farm?

A Yes, I did.

Q Now, I see here, Mr. Noxon was present, Paul Short was present, and others, Janet Cammack. This says Janel Cammack. I believe that's Janet, isn't it?

A Yes.

Q All right. It shows that you were present here?

A Yes.

Q And this Leon Maxwell who you just referred to as your counterpart that was, that you were apparently supposed to emulate. I want to draw your attention, now, to the second page of these minutes. By the way, were these the formal minutes from the meeting?

A Yes, they were the formalized minutes that would go in the records.

Q All right. Drawing your attention to number 8, just read that for us, if you will, and then I'll ask you to comment.

A "We were instructed to destroy old memos, claim school notes, old procedures, old P and S manuals, et cetera. The reasoning behind this is that we do not keep discoverable information that could be asked for in [100] bad faith suits. It was emphasized that we purge information that is older than six months. Seldom do we refer to this old information anyway."

Q Now, where did Ms. Cammack come from, if you know, or what did she represent, if anything, regarding where she came from before working in the Mountain States Region?

A She had just transferred from, I believe it was Austin, Texas. It was a division in Texas to the regional office in Greeley, Colorado. She and the regional vice president, Buck Moskalski, both came from the same Texas region to head the Greeley, Colorado division.

Q Would you tell the jury what was discussed regarding the bad faith suits, and discovery in bad faith suits?

A Well, Janet relayed that when she and Mr. Moskalski were in Texas, that there was a bad faith suit going on, and that the plaintiff attorneys, the attorneys for the other side, had not only subpoenaed State Farm's official documents and records, but went to all of their claim handlers and claim representatives and said, "We want all of your old notes and your manuals and things where you went to claim school. We want your old stuff as well."

[101] And they did not want to have to produce it again if something similar happened in the state of Utah. And so their message was that our claim handlers and representatives were to be instructed to go through and destroy everything so that, should someone come along and ask it to be produced, for whatever reason, that State Farm could honestly say, then, "We don't have it."

Q While working there in 1990, were you aware that the Campbell bad faith action, the present action, had been filed?

A Yes.

Q Were you aware of any other bad faith action pending against State Farm at the time?

A Not -- I couldn't remember any other, no.

Q Okay. Now, the last sentence, here, "We were informed that if we are ever contacted for some of our old records, that we immediately fax a copy of the request to Janet Cammack."

As a result of this particular meeting, what did you do in terms of this issue?

A I went back to my desk and made myself a note that this was something I needed to follow up on, not just retain and file away. So it looks like the next day, at about 3:00 o'clock in the afternoon, I sat down [102] at my computer and hammered out a message to the people underneath me, relaying what I'd heard at the meeting, and that we have a directive that they need to pull their old claim school notes and medical seminar notes, and all of the things that fall into those categories, and pull them out and destroy them.

Q Now, did you keep minutes of your own of this staff meeting?

A Yes, as I'm in the meeting I take my own handwritten minutes.

Q Is page 1 of Exhibit 137 a true and correct copy of those handwritten notes that you kept during the meeting?

A Yes, it is.

Q And then on item number 6 -- Your handwriting's a whole lot better than many we've seen. I think I can read it. "Discovery, throw away claim school stuff and all old procedures. When State Farm info is received in discovery, interrog, or request for production." Is that correct?

A That's what it says, yes.

Q Are interrogatories and requests for production those things in a lawsuit, such as the present case, where one party has a right to request documents and information from the other?

[103] A Yeah, that's usually where the request will come from, either through interrogatories or a request for production to produce your documents.

Q All right. Now, you were referring to the fact that within a day or so you went back to your office and prepared a memo; is that what you said? Prepared a memo to your subordinates?

A Correct.

Q All right. Let me -- The jury has seen this, so I don't want to spend time reading this. But is this a true and correct copy, which would be page number 4, excuse me, page number 5 of Exhibit 137?

A Yes, it is.

Q All right. And was this the memo that you sent out to the individuals listed here at the top of the memo?

A Yes, those are all the people in my unit that this memo would apply to.

Q We've heard from Felix Jensen. Now, why was it, Ms. Bird, that you kept a copy of these documents? Why didn't you destroy these?

A Well, I always kept staff meeting minutes. I've got my minutes back -- Let me see, I left in '91, I have staff meeting minutes back to 1987. A lot of times, because there were items that I needed to follow [104] up on and do, and so I would keep them until I did such thing.

Another reason is, insurance and auto accidents and laws are constantly changing. A lot of times at these meetings we would have one of the attorneys say, "Oh, there's been a new case, we have to now do something differently in how we handle uninsured motorist claims." And he would tell us what the law entailed or whatever. So I kept them as a reference library.

Q These pages we were referring to, why did you keep these memos?

A That was why I kept the staff meeting minutes. That was part of my routine. I also kept them, because Mr. Noxon had a bad habit of forgetting, changing his mind, forgetting

he told you what to do, and quite often we would have to go back to our staff meeting minutes and say, "Here it is in writing, you said the opposite of what you're saying now."

I kept a copy of the minutes that I sent to my staff because, frankly, I was uncomfortable with what they told us to do at the time.

Q You mean destroying documents?

A Yes. We were allowed to ask questions, and somebody asked, "Is there going to be a copy of these [105] manuals and procedures back at corporate office if we need them for a case or something?"

I could understand where my claim representative may not be the best custodian for the official document that may prove to tout State Farm procedure. It wasn't me, I forget who it was, it was asked, would corporate offices maintain at least a master set so that we could use them if we need them, and we were told --

MR. SCHULTZ: Can we have some foundation on that, who asked that question?

MR. HUMPHERYS: She just said she couldn't recall who it was, but one in the meeting, and we know the time and the setting. I don't know what more we could get.

THE COURT: Proceed.

Q (BY MR. HUMPHERYS) Go ahead.

A Someone asked Janet Cammack, and her reply was, no, corporate wouldn't even be keeping these types of things. And I felt very uncomfortable doing that, and to be honest with you, it was a "cover your derriere" memo.

I just thought, "One of these days, if something goes bad and documents have been destroyed and people were upset about it, I didn't want State Farm to [106] turn around and say, 'Well, we never told her to do that. She must have done that on her own.'" And that's why I kept that particular memo.

Q All right, now, do you recall having a telephone conversation with Felix Jensen about a year or more ago regarding this memo that's on the screen?

A Yes, I do.

Q Would you tell us what he related to you regarding inquiry that had been made by upper management of whether he had his copy of this memo?

MR. SCHULTZ: Your Honor, I object, it's hearsay.

MR. HUMPHERYS: This is an admission against interest, he's an employee of State Farm.

THE COURT: I'll allow it, overruled.

MR. SCHULTZ: He's not in a management position, Your Honor. He's not in a position to make statements that bind the company.

MR. HUMPHERYS: This has nothing to do with binding the company. This is an admission against interest.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) Go ahead.

A Mr. Jensen called me and said that he had got a call from someone in corporate offices, back in [107] Illinois, he didn't remember who, and they were asking about this memo. And they asked Felix if he had a copy of it. And he told the person that, yes, he probably did.

And they also asked for the address of another person who no longer worked for State Farm, but whose name is on that memo as someone who would have received it. They asked, "Do you know where I can find this other person, as well?" And Felix gave his answer to that.

But in his own words, Felix said that he was told by this person that State Farm was going to take, their official position was that this memo didn't exist.

Q And did he tell you how he responded to that person?

A Something along the lines of, "Well, I probably have a copy, so that may be difficult for you to maintain, or difficult for you to prove. I probably have a copy of it."

Q Now, Ms. Bird, I want to draw your attention -- Well, let me, first of all, explain to you, this portion of the memo that's on the screen has a typewritten portion down here at the bottom, Campbell versus State Farm, civil number, Third District, and the document control number, authenticated, yes, no, State [108] Farm representative as signature, and a control number P-2314. This is not part of your memo, is it?

A No, it's not.

Q All right. I'll just represent to you that that was submitted to State Farm to have them admit that this was one of their documents.

I want to draw your attention to a pleading filed by Strong and Hanni, regarding plaintiffs' authentication documents. It was signed by Paul Belnap on June 14, 1996. On page 2 of that document, paragraph 3 it says, "Defendant cannot authenticate." Authenticate means acknowledge that this is a true and correct copy of a document.

"Defendant cannot authenticate the following documents." Now, you see here, 2230 and 2314, those page numbers. Now I'll slide that over a little bit and draw your attention to P-2314, which is the same as 2314 here, and then your minutes which we've seen of your staff meeting, the same request to authenticate, and the control number being 2230. 2230, that State Farm would not authenticate your documents as being true and correct copies, and real documents.

Ms. Bird, is that consistent with your understanding of what Mr. Felix Jensen told you State Farm's position was going to be on these documents?

[109] MR. SCHULTZ: I object, Your Honor, that is a totally inaccurate statement to make. It's misleading, it's not -- The question of authentication was an evidentiary question of documents coming into evidence. And it is not a correct statement. I object.

MR. HUMPHERYS: I'll lay a little more foundation, Your Honor.

THE COURT: Certainly.

Q (BY MR. HUMPHERYS) Ms. Bird, have you testified before about these documents that we have seen on the screen, regarding the destruction of documents?

A One other time, yes.

Q And based on the interrogation of you by the State Farm attorney, what was your opinion of what position they were taking regarding their documents?

MR. SCHULTZ: Objection, Your Honor, lacks foundation.

MR. HUMPHERYS: I'll lay a little more foundation.

Q (BY MR. HUMPHERYS) Approximately when was it, Ms. Bird?

A 1994. No, hold on, what year is this? '96. It was 1995. Maybe the deposition was '94.

Q That's right. Now, were you asked during the course of the -- Well, let me back up. Was that a case [110] against State Farm?

A Yes, it was.

Q Was it a bad faith case?

A To be honest with you, I don't know.

Q Was it in this state?

A No, it was in the state of Washington.

Q Were you interrogated regarding these documents that we've just put on the screen?

A Yes, I was.

Q And were you cross examined by an attorney from State Farm?

A Yes, I was.

Q Were you familiar with what position State Farm was taking regarding your memos?

A Yes, I -- They never actually got around to the piece of paper, if it was a valid piece of paper. They were trying to say that I missed the whole point, and that that was never mentioned, and that the only reason that Ms. Cammack came for saying to get rid of things would be for housekeeping reasons, we didn't have enough storage space, and it was just a good thing to do to sometimes clear things out.

They were taking -- They never addressed where the memo was a true, existed or not. What they said was, if I was there at that meeting I must have [111] terribly misconstrued what went on, and that nothing like this was the subject matter of what she was speaking on.

Q And do you agree with that position?

A Absolutely not.

Q Were these things discussed as you've just described to this jury?

A They were almost the sole reason. They were the major thrust of what her visit to Utah was about.

Q Was the fact that the bad faith claim in Texas was discussed, was that a minor part of this discussion regarding instruction, or a principal part, or how would you describe it?

A It was a principal part. She told us a little story as to what happened in Texas, and it was something they didn't want to have to come again, so in order to prevent that, now they were new to this region, so that was one of the first things they wanted to do, was come in and make sure that didn't happen again.

Q Did Ms. Cammack say anything about coming at the direction of Buck Moskalski, the regional vice president?

A Yes, she did.

Q And what did she say?

A She indicated that -- Well, she and [112] Mr. Moskalski were both in Austin, Texas, at the time of that

case, they were both promoted and moved together to Greeley. And she was a claim attorney, who at that time reported directly to him, and she relayed the story that Mr. Moskalski was, in essence, the one sending us the message, and she was his emissary.

Q In your employment with State Farm, were there discussions, training and emphasis on trying to get early settlements before claimants were retained by attorneys?

A Yes.

Q Did you ever see statistics, company wide, or in whatever geographical location, of what claims settled for when claims were made without a representation of counsel for the claimants?

A On occasion I would see some figures, yes.

Q And can you give us an example of the kinds of figures that you saw regarding the difference in similar kinds of claims, between a represented claimant and an unrepresented claimant?

A I remember specifically they would, in smaller-type claims, those under $10,000, that there could -- I remember some figures similar to, if they were represented by an attorney, we might pay them $8,000, and if they were unrepresented they would [113] probably receive a $5,000 award.

Q And these were averages over nationwide, or over a large geographical area?

A They were taking their experiences, their figures, and handing them back to us in that manner.

Q Ms. Bird, based on your experience and training, is the value, does the value of the claim, that is the injuries, the problems, the damages, the general damages, the pain and suffering, the disability, should it be evaluated the same, whether or not someone is represented?

A Absolutely.

Q Should the offer to the claimant be the same, whether or not they are represented?

A Yes.

Q I want to just cover about three more points with you. Did I ask you during your deposition whether you'd ever seen an Excess Liability Handbook?

A Yes, you did.

Q All right. And what did you tell me back in 1994, whether you had seen them or not?

A I said no, I hadn't seen one. I believe, I think I said "or heard of one," something along that line.

Q Now, I didn't have one present to have you [114] look at, did I?

A No.

Q Do you recall being subpoenaed and coming in last October/November to a hearing outside the hearing of the jury in the first trial of this case?

A Yes, I do.

Q That was really early in the morning, wasn't it?

A Yes, it was.

Q The jury was fortunate not to have to be a part of that one. You recall that one of the subject matters of that hearing was this Excess Liability Handbook?

A Yes.

Q Had you really had any chance, other than my deposition two years ago, when I asked you whether you'd heard about it or knew of it, to ever look at it, or see it, or do anything with it?

A No.

Q While you were at the hearing, did you hear detailed discussion about the manual?

A Yes, I did.

Q Did that trigger any memory to you about whether or not you had seen the Excess Liability Handbook?

[115] A Yes, it did.

Q Would you relate to the jury, now, what your memory is about having seen the Excess Liability Handbook while working at State Farm?

A When I first got promoted to a supervisor, the divisional claims superintendent in charge of the state of Utah was named Bill Brown. And I had been a claim handler, handling accidents with just property damage, just car damage, or with injuries to our own insured, but nothing that would involve an excess liability case. Most of those, any type of exposure like that were snatched from these units and given to a unit who handled that kind of thing, with more experience.

So when I first got promoted to a supervisor, along with all the many things they give you when you first get promoted about personnel manuals and things you need to learn, I remember that Bill Brown handed me an Excess Liability Manual, about two inches thick, notebook type affair, and just told me to look over it.

I probably kept it for a month or so, and looked through it, but it was all over my head. I didn't have a clue what most of it was talking about. I had never experienced any claims like that, because any claims of that nature were never put in the unit that I [116] had just worked in. And I read it, and gave it back to him, and hoped I never had to answer any questions on it, because I didn't understand nine-tenths of it.

Q When you say two inches, are you referring to the binder?

A Yes, it was like a two-inch type binder, the spine.

Q But the pages weren't two inches?

A I don't recall.

Q Okay. Now, Ms. Bird, what color of a binder was it in? Do you even remember that?

A I remember it was red, because as I would go in to visit with Mr. Brown, as time marched on, he had a credenza

in back of him that was about this high, and he had a lot of notebooks stacked on this credenza. And one of them was this Excess Liability Manual, and it was identified on the spine as such.

So as I would sit and look at him, I could see it over his shoulder all the time, and I always used to just sweat and say, "Please, don't ever let him ask me about anything that's in that manual." Because I didn't comprehend it or understand it.

Q All right. What was it that triggered your memory about the hearing -- Or excuse me, what was it in the hearing that triggered your memory about that, [117] the fact that it had been given to you for review?

A That's really hard to say. About the only thing I can think of is, during deposition, if you asked if I'd ever seen such a thing, once I came to work in that section that handled those types of claims, I had never seen a manual like this, heard of it, or anything. And it just didn't trigger any recognition or memory of it.

At the hearing, I believe it was Mr. Hanni picked up the book, or a familiar facsimile of, and was waving it around, and for some reason this made me remember that that was the name of the book that I had looked at so many years ago, or Mr. Brown had asked me to look at, and that I had, indeed, seen it.

But even at the time I remembered it, I didn't even remember you asked me the question in deposition. Until I was rereading my deposition in preparation for today, about two weeks ago or so, I didn't even know you'd asked me that question.

When I read that you asked me and I claimed to have no knowledge of it, that's when I thought my deposition was wrong, and I need to tell someone.

Q And you faxed me a letter last week?

A Yes, I did.

Q I didn't initiate that letter, did I?

[118] A Not at all.

Q You were generally -- Well, let me back up and cover one other area before I conclude. While you were at State Farm, did you ever interact with the insurance commissioner or regulators of the state of Utah?

A I replied to complaints that were filed, but I never personally interacted with them, no.

Q In all of the years you worked there, did the state insurance regulator or commissioner ever perform audits or random audits on your files to review for compliance with unfair claims practices?

A Not to my knowledge, no.

Q Did you ever exchange information so that, general information about how claims were being handled?

A Not to my knowledge.

* * *

[122] * * *

Q One final note, Ms. Bird. You've indicated how you and your unit always tried to pay fair value on claims and would fight to get the authority you needed to do so. Were you ever reprimanded or challenged because your average paid claims were too high?

A Yes.

* * *

CROSS EXAMINATION BY MR. SCHULTZ:

Q Let's talk about the Excess Liability Handbook first, okay?

A Uh-huh.

Q If you would look in volume 1, page 117, [123] starting on line 16. Have you got that?

A Uh-huh, yes.

Q Mr. Humpherys asked you the question --

MR. HUMPHERYS: Oh, you're looking at the deposition? I thought you said Excess Liability Handbook. Volume 1 or 2?

MR. SCHULTZ: Volume 1, page 117, line 16.

Question. "All right. Now, the reason I'm asking that is I have an Excess Liability Handbook that was dated back in 1972, but in it, it gives various examples of what not to put in a file, or if someone says this, or if defense counsel writes this, a letter like this, that there should be a self-serving letter written back, or some memo back to the claim rep which is self-serving to smooth over or to help with that comment that should not have been made. Do you remember anything about that, or even being taught that?"

And your answer was -- On page 11?

A "I don't recall this book that you mentioned at all, ever even seeing it or hearing of it."

Q Now, that was your sworn testimony on February 19th, 1994. Correct?

A Yes.

* * *

[127] Q Now, is it your testimony that approximately two weeks ago -- Let me back up again. Do you understand, Ms. Bird, that you have a continuing obligation to give notice to the parties to a lawsuit if there's some change in your deposition testimony?

A No, I didn't know that.

Q Okay. Approximately two weeks ago, it's your testimony that you were reviewing your deposition in preparation to be a witness; is that right?

A Correct.

Q And was it when you were reading the pages about the, or the lines about the Excess Liability Handbook that

you realized, or that this memory came to you, and you thought you'd made a mistake in your deposition, and that you testified inaccurately?

A What had happened is when I remembered it at the time, and mentioned it to, Mr. Crowe happened to be sitting next to me, waiting at this same hearing, at the time I thought, "That's funny, they didn't even ask me about that book."

And I truly didn't think they'd even asked me the question until I got my deposition out and started to read it. It surprised me when I saw they did ask me about that question. So up until two weeks ago I didn't even realize that that question was in there. I mean [128] I've got two volumes, and they asked me the question one time, and I didn't recall having seen it. And they asked me no more questions.

Q My question is just trying to get the time frame identified. That two weeks ago you realized that you had made an inaccurate statement in your deposition.

A Yes. Correct.

Q Okay. And I understand that you faxed a letter to Mr. Humpherys to tell him that?

A Yes, I did.

Q Did you fax a letter to my office, telling us that you'd made that mistake?

A No, I did not.

Q Do you know whether Mr. Humpherys ever told our office that you had informed him that your deposition was inaccurate in that regard?

A I would have no idea.

* * *

Q Do you know when the -- Well, you never [129] worked on the Campbell case, did you?

A You mean in my capacity at State Farm?

Q Yes.

A No, I did not.

Q You worked for the auto, State Farm Mutual Automobile Insurance Company your entire career.

A Yes.

Q You were never an employee of State Farm Fire and Casualty Company.

A No, I haven't.

* * *

[142] * * *

Q Do you know what the concept of pending files means? Pendings?

A Be a little more specific.

Q Pendings.

A As a noun?

Q Right. Right.

[143] A Yes, I do.

Q That's in, to simplify it, that's the number of files that you have that are still open.

A Open, correct.

Q Haven't been resolved and closed yet. Correct?

A Yes.

Q In your experience with State Farm, Ms. Bird, did you have situations come up where pendings were discussed?

A Yes.

Q The number of pending files?

A Uh-huh.

Q And was there some discussion to try and see if you could reduce those pendings on a fairly consistent basis?

A Yes.

Q Did you consider that to be an inappropriate goal for a claim handler at State Farm to be aware of pendings, and to try and reduce them?

A No, that was totally appropriate.

Q Okay. Were you ever taught to try and settle cases sooner than they were ready to be settled?

A No, never.

Q Was it your experience in your training at [144] State Farm that you tried, you were taught to settle cases at a point in time when you were aware of what the full extent of the person's injuries were, at least as far as you were able to learn that information?

A Can you repeat the first part of the question for me?

Q Let me ask it this way. Was your training as a bodily injury manager at State Farm, was part of that training to find out what the injuries were that the claimant was asserting?

A Yes.

Q And were you taught to determine as much of that information as you could before you tried to place a value on that claim?

A Yes.

Q Were you taught to go in and try to take a release from a claimant on the basis of paying a few hundred dollars in medical bills the first time you saw that claimant?

A No.

Q And why? Why were you encouraged not to do that kind of thing?

A Well, besides all the moral reasons that you can think of, it could prove to be counterproductive. If you spent money and settle a claim with someone whose [145] injury has not manifested itself, whose injury hasn't either got better to its fullest extent, or clearly healed, like a broken arm, if you settle too early, you could be in violation of fair claims practices acts of the state, and other things, and could subject

the company to this person coming back and being able to break their final release and say, "I didn't know I wasn't completely healed. You should have known that I wasn't healed yet."

And not only do you subject the company to the more money you need to pay out, you're subjected to penalties and frowns from the insurance department and lawsuits, et cetera. So I never saw it as terribly cost effective. Not that we were even told to do that, but it just doesn't seem like you'd be saving much money by trying to settle with someone rolling the dice that hopefully they didn't come back and say, "You did it improperly."

Q Okay, so number one, you were never taught to do that by State Farm.

A No, never.

Q Number two, you never did it.

A Never.

Q Number three, you never taught any of the people that you supervised to do it.

[146] A Never.

Q And you were working for State Farm -- Was your entire eleven years, approximately, that you worked for State Farm, in the auto company?

A Yes.

* * *

[147] Q Now, you mentioned that you received at one time a memo, I think it was, from Mr. Noxon, that identified the average amount paid per bodily injury claim in your unit?

A Yes.

Q Is that right?

A Uh-huh.

Q And was that at a time when you were a claim superintendent?

A Yes, it was.

Q So you had -- How many people, claim representatives, did you have working for you?

A Well, it varied the last five years, but usually anywhere from four to five.

Q Okay. And that included Felix Jensen was one of them?

A Yes.

Q And Clark Davis was one of them?

A Clark Davis.

Q And Jerry Stevenson was one of them?

A Correct.

Q And who else?

A Paul West.

Q Paul West.

A And then there was always a roving fifth spot [148] for someone new and upcoming that trained in my unit for a while, and then seemed to move on to management or whatever.

Q Now, all four of those that we've named were all well-experienced claim handlers in bodily injury; is that right?

A Yes, very much.

Q They'd had a lot of years of experience.

A A lot more than I did, yes.

Q When Mr. Noxon sent you this memo and was comparing the average amount paid per bodily injury claim by your unit to, I guess it was the other unit in your office?

A In the state.

Q Or in the state.

A We had them all down.

Q Now, that only happened one time that you got a memo from him like that?

A Yes. Only once.

Q And he really didn't reprimand you or chastise you, did he, for that?

A I took it as such.

Q Okay. Wasn't it true that when you took over your unit, that you had quite a few large claims that you were having to deal with?

[149] A Yes.

Q And one of the reasons that your average was higher than some of the other units was because some of those claims had settled for a lot higher amounts than the average, right?

A You said when I took over. I took over in '87. I got the memo in '90. So are we -- Are you talking about now in 1990 did I still have a large number of --

Q I thought your testimony in your deposition was that one of the reasons your unit's average loss paid per claim was higher was because you had some more serious bodily injury claims.

A Yes, that's true. Your time frame just confused me.

Q I apologize for the time. And that would explain why there might be a little higher average pay per claim?

A I would think so.

Q Okay. And in that memo, for example, wasn't the average pay per claim in your unit somewhere around $22,000, or something like that?

A It was in the twenties. I'd have to look at it.

Q It was in the twenties.

[150] A I thought it was twenty-seven or something, but it was in the twenties.

Q Okay. And your authority, your personal authority to settle was how much?

A $15,000.

Q Okay. So if your average pay per claim was somewhere in the twenties, and your authority was fifteen, to get your average up to that level you would have had to have been going to Mr. Noxon for authority over $15,000; is that correct?

A Correct.

Q Okay. And so that, to get an average paid per claim that high, you would have to have been getting authority above and beyond your authority.

A Correct.

* * *

[152] * * *

Q (BY MR. SCHULTZ) Ms. Bird, did you think that the claim handlers you were supervising in 1990 needed this old material that they were being told to throw away to do their jobs?

A No, probably not.

Q You thought they would never miss it, right?

A Correct.

Q Now, with respect to the actual documents that were thrown away, some of those, as I understood it, you're saying, were manuals, or old manuals that may have been in their desks for a long time, and may have [153] never even been updated with current material?

A Correct.

Q And that isn't something you would want your claims handlers to be relying on in handling claims, is it?

A No, I wouldn't.

Q With respect to this question about average paid costs that Mr. Noxon sent you one memo on, that really became something that was not even relevant to you as the years went by, correct?

A He never approached me on it again, if that's what you mean.

Q It wasn't something that was ever put into your PP&R?

A No, it wasn't.

Q And as far as you were concerned, average paid costs was irrelevant to the way you handled your job?

A Correct. I never figured it out once. Or ever.

Q And there was no incentive or recognition or compensation based on average paid costs, was there?

A No, there wasn't.

Q Your job wasn't dependent upon whether or not you could lower your average paid costs, was it?

[154] A No.

Q And whether you got a raise or not was not based upon whether you lowered your average paid costs, was it?

A No.

Q In fact, your performance was never even evaluated on the basis of average paid costs, was it?

A Not to my knowledge, no.

Q You weren't getting in trouble about it, and it just simply became an irrelevant issue, right?

A Yeah. It just ceased to become relevant.

Q You didn't impose that kind of a proposition on your unit people, either, did you?

A No.

Q That they had to reduce their average paid costs?

A No, I didn't.

Q One of the issues that's come up in this case, Ms. Bird, from other testimony, is that occasional -- and this is back probably before you worked at State Farm -- there was some testimony from a man by the name of Ray Summers about settling cases for special damages only, or for medical expenses only? All right.

Let me just get you to explain one thing to this jury. Under the law of the state of Utah, [155] beginning probably in the mid-seventies, but throughout the time that you worked for State Farm, we had what was called, and still do have, what's called a no-fault threshold under the automobile insurance laws. You understand that?

A Oh, yes, I do.

Q Okay. You're familiar with what the no-fault threshold is?

A Yes.

Q And back in 1970, I don't know in the mid-seventies up until about 1986, one of the ways that you could breach that threshold was by incurring a certain amount of medical expenses?

A Correct.

Q And those expenses had to be due to the automobile accident; is that right?

A Yes.

Q And the restriction, if you did not get above that threshold, was by law you were not entitled to recover general damages; is that right?

A Correct.

Q And so do you recall what that dollar figure threshold was?

A In what year?

Q Prior to 1986?

[156] A Was it -- I believe it was $1,500.

Q I think it was $500, I'll just represent.

A Thank you. I don't know.

Q So if a person making a claim against a State Farm insured did not have more than $500 in medical expenses that they had incurred because of that accident, and absent some other more serious problem like a permanent impairment or something like that, they wouldn't be entitled to general damages by law, would they?

A No, by law they weren't.

Q Now, beginning in about 1986, mid-'86, that threshold went up to $3,000, correct?

A Correct.

Q And that's what it is today, correct?

A Right.

Q So by law, if you don't have more than $3,000 in medical expenses due to the accident, and you don't have a permanent disability or a permanent impairment, or a death,

or a permanent disfigurement, if you don't have any of those things and you're under $3,000 in medical expenses, by law the claimant cannot, is not entitled to recover general damages; is that right?

A Right, no pain and suffering.

Q Now, you talked a little bit about whether [157] claimants would get counsel, and how that might affect a settlement. Do you recall that testimony?

A Yes, I do.

Q It's true, isn't it, Ms. Bird, that the way State Farm tried to approach claimants, and to get cases settled without the claimant, perhaps, having an attorney, was by giving good service, by being readily accessible, and by being fair.

A Repeat to me the first part of your question.

Q Well, were you encouraged by State Farm to try and settle cases without a claimant getting an attorney, by you giving good service, by being readily accessible, and by being fair to the claimants?

A Yes, those were very important.

Q Your instructions weren't to go out and try to misrepresent facts, or defraud these people in order to get them to settle, were they?

A No, they were not.

Q And you were never instructed by State Farm to tell a claimant that they shouldn't get an attorney, were you?

A No.

Q Did you believe, while you worked for State Farm, Ms. Bird, that by giving good service, by being readily accessible, and by being fair, and trying to [158] settle claims in a reasonable time period, that you were being honest with those claimants?

A Yes, very much so.

Q Were you taught to cheat people by State Farm?

A No.

Q Whose interests, in a bodily injury claim, whose interests were you required to look out for?

A My own insured.

Q Okay. And that would be the person who has the policy with State Farm.

A Yes.

Q And by settling a case at an appropriate time, and obtaining a full release from the claimant, was that an appropriate way to protect your insured's interests?

A One of many, yes.

Q Even if the claimant didn't think you paid him or her everything they wanted?

A If the claimant didn't think I paid them enough, would that still be protecting my insured's interest? Is that the question?

Q Let me rephrase it. Did you ever have the experience where a claimant, or a claimant through their attorney, demanded a lot more to settle a case than what [159] you thought it was worth?

A Most of the time, yeah.

Q Okay. And did you typically settle most of those cases by negotiating?

A Oh, yes.

Q And even though that claimant didn't get the full amount that they had originally demanded, but you were able to settle the case by an agreement and get a full release, did you, by doing that, protect your insured's interests?

A Yes.

Q Were you taught to be fair, to be above board, and to be as decent as possible by State Farm?

A Yes, I was.

Q Were you taught that it would hurt State Farm if you were not that way?

A Yes. There were, as I mentioned, instances that if I didn't handle it properly, it could come back and be far more costly and do far more damage.

Q Okay. And you taught the people that you supervised to be that same way, didn't you?

A They pretty much knew it already. They'd been around for so long, I don't know if I taught them anything. But they were well aware of it, and I believe they practiced it, as well.

[160] Q Okay. If you settled a case, Ms. Bird, a bodily injury claim, with someone for less than the full amount of the authority that you had on that case, did you view that as being dishonest?

A It depended upon the circumstances and the difference between what I settled for and what the policy limits were and what the injury was worth.

Q Well, let me give you this -- Let me ask you this question. As a claim handler for State Farm, did you ever settle a bodily injury claim for less than your full authority?

A Yes.

Q And that was because the claimant, or the claimant through their attorney, agreed to that, correct?

A Eventually, yes, they would have had to agree.

Q Now, did you personally think you were committing a dishonest act by exercising your negotiation ability and settling a case for somewhat less than your full authority?

A Sometimes I did, Stuart, because I couldn't win every battle with Bob Noxon. I had to pick and choose my battles sometimes, and there were times when he would say, "I'm going to give you $2,000 less than [161] the policy limits, and let's see how fast you cave in and give limits."

And there were times when I would do, I would only pay what he had given me authority to pay. It didn't happen often, because it wasn't something I did often, but there were times when I felt like the claimant was not getting the full amount due him because of Mr. Noxon's views.

Q Did you think that there was a range of value for cases?

A Sure, most cases have ranges.

Q Okay. And did you think that reasonable people might be able to disagree on the range of that value?

A Yes, but the cases I'm talking about were probably policy limit-type cases, where the injury exceeded the policy limits. And so to further undercut it by more, even if by $2,000, was not warranted.

Q Did you ever have to take a case to trial because Mr. Noxon didn't give you the authority that you thought you were supposed to have?

A No, I hounded him. I'd find him on the golf course. I'd call him at home. I felt my first duty was to my insured, and if I had to live with him being mad at me, so be it. But I never took one to trial because [162] I couldn't get him to agree with me. Because if it was going to trial, it's one I would have stood, I would have made a goal line stand on it. I wouldn't have backed down.

Q And whenever people negotiated with you, most of the time they had counsel, didn't they?

A Are you talking about plaintiffs, or claimants?

Q Yeah, right.

A I think by the time I left it was about 75 percent of the people who were injured had attorneys that represented them.

Q I thought your testimony was that about 85 percent of your claims --

A That could be.

Q -- had counsel. So more than 8 out of 10 of the people you dealt with had lawyers representing them.

A That would be fair to say.

Q Okay. And those lawyers were obligated to represent those people to the best of their ability, right?

A I hope so.

Q And when you reached a settlement for a certain amount, it was based upon an agreement with that person and with their lawyer, right?

[163] A Correct.

Q So there was never an instance where Mr. Noxon refused to give you the authority that you felt you needed, that ended up with you having to take that case to trial.

A No, I never let one get that far.

Q Okay. And of all the cases that you took to trial, and I guess when I say "you," I mean either you as a claim representative or as a claim superintendent, of those cases that were under your responsibility that went to trial, did you ever lose one?

A No.

Q And we've talked about what that means.

A You have?

Q But I want to just give you an example, okay, so that this is clear. Let's say we have a case where you have a $50,000 policy limit, all right?

A Uh-huh.

Q And a complaint is filed by the plaintiff through counsel against a State Farm insured. And State Farm provides an attorney to defend the insured, right?

A Correct.

Q Let's say that this case goes on for a while, and that the demand is for the policy limit of $50,000 for quite some period of time, all right?

[164] A Okay.

Q And let's say that, not only is there a demand for $50,000, but there are letters where the allegation is made, "If you don't pay $50,000 you'll be in bad faith because this case is worth a lot more than $50,000."

A Okay.

Q You've seen letters like that in your career, haven't you?

A They all say that.

Q Okay. Now, let's say that State Farm offers $15,000 to settle this case, all right? And the plaintiff says, "We'll take $25,000." All right?

A Okay.

Q And State Farm says, "No, we're going to pay, we're willing to pay $15,000, but we're not willing to pay more than that." Okay?

A Okay.

Q And so the case then goes to trial. And the jury returns a verdict of about $5,000. Under State Farm's statistical analysis, would that be considered a win?

A Yes. A win was if you went to trial and the jury awarded an amount that was equal to your highest offer, or less than, then that shows that you evaluated [165] it properly, and the fact that they didn't take the money is not your fault. But you would evaluate it and offer the proper amount, either equal to or less than your highest offer.

Q Okay, now, let me just, just to clarify that, make that very clear. What if the jury had come back and awarded $20,000? That would be less than the plaintiff's lowest offer, but it would be more than State Farm's highest. Would that count as a win?

A No, that would be a loss. Anything that was higher than your highest offer would make you lose the case. It would be marked in the lose column rather than the win column.

Q And so what you're saying is that during your entire time with State Farm, you never had a case where your offer that you made went, the amount that you offered before trial, the highest amount you offered before trial, that a jury came back and awarded more than that? You never had one that happened like that?

A No, I never have.

* * *

[166] * * *

Q If you were dealing with people who were not represented by counsel, Ms. Bird, were you trained to ask them, to make sure you asked them if they had any [167] lost wages, or if they had any other out-of-pocket expenses?

A Yes, I believe it's in the Unfair Claims Practices Act of the state, too. You have to ask those questions.

Q And you did that?

A Yes.

Q And the people that worked for you did that?

A Yes.

Q Is it true that you did not place a higher value on a claim just because the claimant hired an attorney?

A No, you didn't. That didn't change your value of what the injury was worth at all.

Q And if you were reaching some kind of a settlement with a person who was not represented by counsel and you were asking them to sign a release, when you did that, did you make it clear to them that this was a full and final release, and that they would not be able to make claims for anything else after that?

A Very clear. You put things in writing, you documented, you wrote, "I fully discussed this, they fully understand they can never come back again." I mean you wanted to make sure you were quite detailed when you noted the conversation, so that you had proof [168] that you did talk to these people.

Q As a claim superintendent in charge of several claim handlers, were you trained, and was it your responsibility to check their files on a periodic basis to make certain that they were paying what was fair?

A Yes. As I mentioned, I had to see them the first thirty days at least once, this is minimum, and I saw them a minimum of every sixty days after that.

Q During the time you worked at State Farm from 1980 until 1991, did you ever know anyone to phony up documents, or to falsify documents?

A Claim files, or other things?

Q Claim file documents?

A What do you mean by "phony up"? Be more specific.

Q Let me refer you to your deposition. Page 150 of volume 1. Let me read the question that starts on line 14. "Have you ever known of any adjusters to prepare phony documents and put them in their files as if they had gotten a memo from their superintendent saying, 'I've only got so much authority,' and then using that as a negotiation tool with any claimants or third parties?" And what was your answer?

A "Never, not to my knowledge, at all."

[169] Q Okay. And as far as you know, doing something like that would have been against State Farm policy, correct?

A Yes.

Q As far as you were aware, in your training, Ms. Bird, was it State Farm's corporate policy to see that what was owed was paid on these claims?

A That was a common, I don't want to say catch phrase, because that make it sound trivial, but it was a very common phrase used all the time, and they did try to make you see that that's what they wanted to be done, and claims handled in a fair and appropriate manner.

Q And was that the way you handled them?

A Always.

Q Is that the way you taught, or the way your people that you worked with handled them?

A I believe so, yes.

Q Okay. And did you handle each claim on its own merits?

A You had to, yes.

Q There's been some testimony from other witnesses in this case, and I want to just ask you a few questions in relationship to that, all right? Tell me what you know about that. Was it your understanding, Ms. Bird, or were you taught by State Farm that you were [170] to put State Farm ahead of both God and country? Was that one of the slogans you were taught at State Farm?

A I've heard it bantered about by people that have worked with the company longer than I. I've never heard someone in a State Farm function say those words. But I would have to say that they require a large portion of your life.

Q But did they ever teach you in a claim manual that you put State Farm ahead of God and country, both?

A No, I never saw it in a claim manual, no.

Q And you didn't think that that's what you were supposed to do, did you, specifically?

A If you wanted to get promoted it was probably a good idea, but it's not written down anywhere. But I don't venture that that's different than any other corporation around.

Q Is most of the training at State Farm centered on teaching people how to deny claims instead of how to pay claims?

A Is it centered on that?

Q Yeah.

A No. No.

Q Was it your understanding, based on your training at State Farm, Ms. Bird, that it was in your best interests, as an employee at State Farm, to be [171] dishonest and to cheat people?

A No, it would never have been in my best interest.

Q Did you pay less on a bodily injury claim because the claimant was a woman?

A No. Well -- No. I'm trying to think. Sometimes you pay more because they're a woman, but I don't think I've ever paid less.

Q Did you pay somebody less on a claim because they were maybe richer than another person?

A No.

Q Did you pay people less on claims because they were a member of a minority group?

A No.

Q Were you ever taught to do those things by State Farm?

A No.

Q Did you ever teach any of your people to do those things?

A No.

Q Were you programmed by State Farm, Ms. Bird, to treat every claimant as though he or she was a crook?

A No.

Q Okay. Are you being paid $200 an hour to testify here today?

[172] A I wish. No.

Q Is there a policy at State Farm that you paid people less on claims because they were bikers?

A You mean like motorcyclists, or mountain bikers?

Q Either one.

A No. No.

Q Did you ever -- Well, let me -- You mentioned one case where you had prepared a claim committee report, and that you had to do that because you needed more than $50,000 in authority?

A Correct.

Q And you prepared a very detailed record on that?

A Yes.

Q And detail both the pros and the cons on the case?

A Yes, as you need to in there.

Q And I believe your testimony was that Mr. Noxon disagreed with you on that one, right?

A Yes, he did.

Q And that he asked you if you would change your recommendation; is that right?

A Correct.

Q Did you do that?

[173] A No, I didn't.

Q In fact, you told him you wouldn't do it, right?

A Correct.

Q And you told him, "This is why you hired me, is to tell you what my honest opinion is on a case," right?

A Correct.

Q And you told him that you simply wouldn't change it. You thought you were right, correct?

A Correct.

Q And that case, the way it turned out, was he ended up obtaining the authority that you demanded he get, didn't he?

A Yes, after he told me to get out of his office, yeah.

Q But he followed, ultimately followed your recommendation, didn't he?

A Yes.

* * *

[174] * * *

Q Now, is it true, Ms. Bird, that you were taught, in writing up your materials that you would put in a file, that you were taught to choose your words carefully and be judicious in what you said?

A Yes.

Q Were you ever taught to misrepresent?

A No, not -- You were taught, like you say, to write things cautiously, to not write certain things. And I don't know if not putting something in would be construed a misrepresentation. It probably would be if you really got right down to it.

Q You didn't ever misrepresent anything, did you?

A I never misrepresent anything I wrote, but I [175] probably would have been guilty of not writing things down that perhaps should have gone in a file.

Q Let me refer you to page 11 of your deposition.

A Volume 1?

Q No, line 16. Would you read the answer that you gave, there, from line 16 to line 20?

A Answer. "Through the surveys, and you learned a lot about the tone you take and the words you use. You choose your words very carefully. But I don't mean to say that you misrepresent, either. I don't mean that."

Q Okay. Thank you. Were you ever taught to embellish, or fill in gaps to make a file look better?

A No.

Q Did you expect the attorneys, the outside attorneys that you hired to represent State Farm insureds, to give you a recommendation on the range of value of a case?

A Yes, that was one of their duties.

Q Did you expect them to give you a recommendation on whether or not they thought the case should be settled or tried?

A Yes.

Q And was it your experience that they did [176] that?

A Yes.

Q Now, you mentioned that you had some experience where you didn't think you were getting the authority you needed from Mr. Noxon, that you would go to your house counsel, a man by the name of Richard Sprately?

A That was one of -- He was one of the people I used to go to.

Q And he was an attorney who worked actually in the State Farm office. Correct?

A Right, he was a State Farm employee in the State Farm building.

Q And what you testified to is, as I understand it, if you felt like the authority Mr. Noxon was giving you was not sufficient, you could call Mr. Sprately and say, "Will you call Mr. Noxon and give him your opinion and see if you can convince him?" Right?

A Correct.

Q And your experience was that Mr. Sprately was able to do that, and you would get the authority that you had asked for.

A Yes.

* * *

[177] * * *

Q (BY MR. SCHULTZ) Did the private law firms that you typically worked with, Ms. Bird, who handled cases for State Farm insureds, did they provide you with good counsel regarding recommendations and evaluations of the cases?

A I felt they did, yes.

Q Did you feel that they were giving you counsel that they independently felt was appropriate?

A Yes.

Q Did you even occasionally go to those lawyers in those outside private firms and ask them to talk to Mr. Noxon and give their independent views on the value [178] of the case?

A Yes.

Q And did they do that?

A Yes.

Q And were they able to assist you in getting authority that you felt was necessary, and that they independently also, by their own opinions, felt that it was appropriate?

A Yes.

Q Now, with respect to this one case that you had with Mr. Noxon that went up to the claim committee report.

A The claim committee.

Q The $50,000 case. Is it true that that was the only time Mr. Noxon ever asked you to change or alter a document?

A Not a document, but a claim file, yes.

Q Okay. Let me refer you to page 105 of volume 1 of your deposition. And this is, I'm starting on line 22. This is after you have explained this whole incident, okay, Ms. Bird?

A Uh-huh.

Q The question on line 22 was, "Any other similar circumstances?"

And your answer there, starting on line 23?

[179] A "No, that's the only time he ever asked me to change or alter a document."

Q Okay.

MR. HUMPHERYS: Well, hold it, that's very misleading, because her next sentence says, "Wait a minute, I -- "

Q Read the rest of it.

A "I can't say that. I guess I can say that the claim committee was part of the file at the time I generated it, had it typed, carried it to him for his approval. It was not physically in the file yet.

Q Okay, and the next question was, "And I'm not referring to something that's been filed, but only something that's been prepared that was then suggested be changed." And your answer?

A "No, because I was always pretty -- I think he knew how I would react, and I just don't think he -- "

Q "He never asked you again." Answer?

A "He never asked me to do it again."

Q Now, did you ever have to rewrite your claim log using different colored pens after the fact?

A No. No, I never did.

* * *

[180] * * *

Q Felix Jensen was in here a couple of days ago and testified. You know him very well, don't you?

A Yes, I do.

Q One of the things he commented on was, after thirty-three years it's still somewhat difficult to say exactly what fair value is on a claim. Now, in your experience, was it somewhat difficult to pinpoint the exact value of a bodily injury claim?

A An exact value would be difficult.

Q So you had to kind of work within a range. Correct?

A Yes. Yes.

* * *

Q (BY MR. SCHULTZ) Is it true, Ms. Bird, that you were never told to intentionally undervalue a claim?

A That's true.

Q Is it true that you never told your people that you worked with to intentionally underestimate a [181] claim?

A That's true.

* * *

Q Okay, let me ask it this way. Were you ever aware of a State Farm company-wide, or local policy, that you were to impute negligence or comparative negligence to a claimant where you did not honestly think there was some?

A No, I was not aware of any such policy.

Q And you did not do that, did you?

A No.

Q And you were not ever told that it was the policy, or you were not -- Let me start over. You were not told that you should downplay a claimant's injury, were you?

A By downplay, you mean minimize or disbelieve?

Q Yeah, minimize what the real injury was.

A No.

Q Would that be against the policy and the practices of the way you understood them, the way you were taught from State Farm?

[182] A Correct.

Q Are State Farm claims people, based on your experience, told to educate claimants and policy holders regarding the coverages that are available?

A Yes, they are. I believe, again, it's in the Unfair Claims Practices Act.

Q Including general damages?

A Yes.

Q And that was something you were taught to do?

A Yes.

Q Something you did?

A Yes.

Q Something that your people that worked for you did?

A Yes.

* * *

[185] * * *

Q You settled the vast majority of your cases, did you not, while you were at State Farm?

A Yes, I believe 1 percent, or something like that, actually made it to trial.

* * *

[187] * * *

Q All right. Now, let me read you this from the claim supervision manual. "State Farm's claim philosophy is to pay what we owe, no more and no less. To accomplish this, each claim, large or small, should be handled only on its own merits, in accordance with the facts of the loss, the law,

and applicable coverage, not on the basis of a person's race, age, religion, sex, national origin, or any other irrelevant consideration.

"Our communications to policy holders, claimants, and others with whom we do business, as well as our internal communication, should clearly and consistently demonstrate this claim philosophy."

Now, is that statement consistent with what you've testified to, was what you were trained to do and what you tried to do and instill in your people to do?

A Yes, it appears to be.

* * *

[188] * * *

REDIRECT EXAMINATION BY MR. HUMPHERYS:

* * *

Q Ms. Bird, is there a difference between what may be written by way of policy and what is actually practiced?

A Yes, there could be a difference.

Q And in your experience at State Farm, have you seen sometimes where what he just read to us out of that manual was not done?

A On occasion I'd seen where the two, two things could be in conflict, yes.

Q And, in fact, haven't you seen sometimes where they have treated someone differently based on sex?

A I've seen that, yes.

Q All right. Let's talk now, when you've said generally about what you've been trained in and what you have seen in some of the manuals, I want to talk more about what you've seen in practice, now, as opposed to what the training might be. When you mentioned that you [189] always --

Well, let me back up and put it this way. Are there people at State Farm that you know that earnestly try and do their duty appropriately, and always pay claims fairly?

A By far the majority of the population does, yes.

Q Have you also found that there are many that don't?

A I wouldn't say many, but I have found some that don't, yes.

Q All right. But you have always tried to, in that regard, haven't you?

A Yes.

Q Now, let me cover a few things with you about Mr. Noxon. When Mr. Schultz asked you about changing documents, and you said that Mr. Noxon had asked you to change the CLR and you refused to, did you make it very clear to him that you would never engage in that conduct?

A You mean change the claim committee?

Q Yes.

A Yes. Numerous times we've had the same type of thing, same type of, would I change my mind? Would I -- And I made it very clear that I would rarely do [190] so.

MR. SCHULTZ: Your Honor, I think Mr. Humpherys misspoke there. He said change the CLR. That's not what her testimony --

MR. HUMPHERYS: I think she clarified it by saying, "You mean the claim committee?" and I said yes.

Q (BY MR. HUMPHERYS) Mr. Jensen has testified that probably a hundred or more times Mr. Noxon requested, through you, that he change his written evaluations, and that he refused to do it, as well. Would you refute what he has said?

A I don't recall that Mr. Noxon ever asked me to tell Felix to change a file.

Q I'm talking about his evaluations. Mr. Felix said -- I asked him the question, "In your experience have claim files ever been changed, or have been documents been changed?"

And he said, "All the time."

And I asked him, "How many times?"

And he said, "Probably over a hundred times."

MR. BELNAP: Your Honor, that misstates his testimony.

MR. HUMPHERYS: Let me read it, then. I'm not trying to misstate it. I'm not sure I have his deposition. The jury's heard it, and I'm not trying to [191] misstate it, but he said that he was asked to change his evaluations well over a hundred times. I'm not talking about his CLR or the claim committee. I think that's more on your level. But he --

Q (BY MR. HUMPHERYS) Well, let me start by asking this question. When Mr. Schultz asked you, "Have you ever seen where Mr. Noxon has asked you to change a," I think he said "documents."

And then you said, "Kind of," with a question mark, and you said, "Other than the claim file?" And then you said, "Other than this one time, he's never asked me to."

Has he asked you to change other documents?

A Yes.

Q And to alter those, or to amend or change them?

A Yes.

Q And did you continue to maintain your position that you would refuse to do so?

A I wish I could say I did. You don't feel very proud of yourself, but no, sometimes, about half the time I would, and about half the time I didn't, if I felt it was of no large consequence.

Q All right. Was there quite a bit of pressure on you to do those kinds of things?

[192] A Quite a bit. As I say, his style of management, he used to call it the hold-your-feet-to-the-fire style of management.

Q Now, was there a time when you tried to go above him to explain what was going on?

A Yes. I mean I'm not a rat, and I can take my lumps with the rest of the guys, and for many years I didn't complain. But it got to be -- He would make getting authority to pay files so difficult, either by denying me access to him so I could not get the authority, or get it in a timely manner, or reduce the amount once I got in there, it got so bad that I thought, "This is no longer just something I can put up with, and I can take his, you know, his being mad and it's not so much me any more. I've got insureds, I've got people I'm trying to protect, here. And he's making it so difficult, he's putting my insureds in jeopardy."

So finally, in 1990, March of 1990, I asked to speak to Mr. Noxon's immediate boss, John Martin, who was the division manager at the time. He didn't reside here in Utah, he resided in Colorado. Mr. Noxon was the highest Utah person here at the time. So I asked to talk to him about the difficulties that were going on.

Q What did Mr. Martin tell you, either in this conversation or others, in terms of what you were [193] complaining about?

A He just sat and listened to me, and said, "I will investigate. Make no bones about it, I will get to the bottom of this." And for the next month he did talk to, I believe every management person in the state of Utah, and quietly, as you get together, you kind of talk amongst yourselves and you say, "Well, John Martin's out," and I just, you know, they would say, "I told him everything. I just told him this and told him that."

MR. SCHULTZ: Your Honor, I object to that, that's hearsay. Move to strike.

MR. HUMPHERYS: It is against a party's interest.

MR. SCHULTZ: It isn't a statement against a party's interest. It's just a conversation with people.

MR. HUMPHERYS: We feel it is against an interest, and when she tells why I think it'll be clear.

THE COURT: You can ask the next question.

Q (BY MR. HUMPHERYS) Now, did Mr. Martin get back to you in terms of eventually how he was suggesting his views of the matter?

A Yes, he met with me thirty days after I had originally talked to him about the problem, and it was a very short meeting, because he simply said to me, "I couldn't find one person to support one single [194] allegation that you brought up."

Q And did he say anything about whether you needed to be more cooperative, and more of a team player?

A Not at that meeting, because I left.

Q Did he tell you that in another meeting?

A Yes.

Q Now, Mr. Schultz asked you if there was much pressure on you regarding average paid claims and reducing them. I want you to refer to a memo from Mr. Noxon. Is this a memo that you received from Mr. Noxon?

A Yes, it is.

Q Was it very unusual to get a memo like this from your management?

A It is. Even though Mr. Noxon's not a memo writer, he's -- It would take too much effort to sit down and dictate it. He's more of a pick up the phone and yell or walk by your office and yell. So if you ever got anything in written form, he was really upset about it.

Q All right. And here it talks about your average paid BI costs being higher than anyone else.

A Correct.

Q And he says here, "But it seems that you may [195] have a problem that you can work on." Is that a problem, trying to reduce your average paid claims?

A Apparently that was his view, that this was a problem situation that needed to be corrected.

Q Did you consider this to be a very strong mandate for you to start reducing your average paid claims?

A Very much so. As I say, if you got anything written from him, you were really in hot water.

Q I'd like to show you another document, it's in Exhibit 137, and it's also in the exhibit regarding the Mountain States PP&Rs. It's your PP&R dated 1985. And perhaps you haven't focused on this, I think Mr. Schultz asked you if you ever had any objectives set regarding reducing average paid claims, and I think you said no.

Now, just as a preface to this, why was it that you were not concerned about reducing average paid claims?

A I just felt it had no relevance. A claim was worth whatever it was worth. And if I, just by the luck of the draw, happened to get insureds who went about bashing people more than others, you can't be lowering your payments to those people to make the figures fall in line.

[196] Q Right.

A It wasn't something I concerned myself.

Q All right. But now, let's look here, which is page 8 of 137, your PP&R, now here, on this particular goal it says, "Reduce costs of BI expenses." Now that's not the amounts that you pay in claims, is it?

A No. No, that's housekeeping expenses.

Q Now, on this side of your PP&R, is this your review and evaluation by your superintendent above you on how you're doing?

A Right. The left-hand column were goals he set for me at the beginning of the year. The right-hand column is, did I meet those goals, with comment, or did I not meet those goals?

Q All right. Now, here it says, "In response to reducing the BI expenses, you're on goal." Now, that has to do with expenses like attorneys fees or experts and miscellaneous expenses that are associated with the claims; is that right?

A Correct.

Q Okay. But then let's read what he says right after. "However, we are concerned with our BI severity continuing to increase." What is severity?

A Severity was a common term used for how [197] severe, how much money you would spend on a claim.

Q The average paid claims?

A Right.

Q Okay. So here, back in 1985, there's concern expressed to you regarding the severity continuing to increase.

A Right.

Q All right. But again, you didn't concern yourself with that, because you felt a claim needs to be paid what it's worth, regardless; is that right?

A Yes.

Q All right, now, let's cover a few other things. I'm going to come back to this example in a moment. But using what you said earlier about the statistics that in a particular kind of injury someone who is represented would have an average payment of $8,000, and a non-represented would have received an average of $5,000.

Ms. Bird, if you were to evaluate this kind of claim, would you have offered the $8,000 instead of the $5,000, merely because someone was unrepresented?

A No.

Q You would have offered the higher amount?

A I would have offered whatever the injury is worth, attorney or no attorney. It made no difference.

[198] Q And you believe that would be wrong, wouldn't it, to try and take advantage of someone because they were unrepresented?

A Yes.

Q You didn't do that, did you?

A No.

Q You're not saying that all others in State Farm didn't do that, though, are you?

A I wouldn't know if they did or not. I couldn't look at every file.

Q All right. Now, let's go back to this example that Mr., this hypothetical that Mr. Schultz raised, here, where there was a demand for policy limits, later it was reduced to $25,000, there was an offer by State Farm of $15,000, and a jury came in at $5,000. And what it means to be a win or a loss, and so forth.

Let me add to this hypothetical that a claim was made for this injury, let's say the injury occurred in 1988, and a claim was made during this period until 1992, when, and during this time period State Farm offered zero, the entire time. And the claimant, who thought he or she may have been injured, brought a lawsuit then, at this point, and State Farm continued to offer zero until just before trial, and then they [199] offered the $15,000. And this would have been, oh, let's say even a couple of years later, in 1994 or 1995. And then State Farm offered $15,000 just before trial, and the verdict came in at five. That would still be considered a win, wouldn't it?

A Yes.

Q Even though State Farm had refused to offer anything for six or seven years, it would still be a win?

A Yes.

Q Would that be right, in your opinion?

A Right, in --

Q Right to offer nothing for six years until just before trial?

A No, it wouldn't be morally right. Unless they found out some really relevant information six years down the line that changed their evaluation, it wouldn't be proper.

Q You wouldn't --

A It would be right State Farm bookkeeping principles, but it wouldn't be morally right.

Q So if that's what happened in this scenario, you feel that would not be proper claims adjusting, even though it was considered a win?

A If no new information surfaced six years [200] later to make an understandable reasonable change from zero to $15,000, then that would not be correct. If you still had access to all that information in '88, '89, and '90, and you didn't act on it, then that would not be correct, that wouldn't be right.

Q And if the jury came in and found $5,000 in damages, that would indicate there was at least some evidence of injury, usually, or typically, doesn't that, isn't that usually what it means?

A Yes, the jury thought that the claimant was injured to the tune of $5,000.

Q Isn't it also true that in this win ratio, you don't count any lawsuits against State Farm?

A Against State Farm as a company?

Q That's right.

A Correct.

Q So let me give you an example of what Mr. Jensen said. He talked about the fact that there was a small child that he had settled a claim for a few thousand dollars on, and then later he opened the file and ended up paying a quarter of a million dollars on.

And then in cross examination I asked him, "Wasn't there a lawsuit?"

"Yes."

"And didn't it take a lawsuit against State [201] Farm in order to set aside that release, in order to get the payment?"

And he said, "Yes, it did."

This kind of case would never be counted in their win-loss ratio; is that correct?

A Not to my knowledge.

Q I think that's right. Are you aware of whether or not State Farm reports excess cases in their win-loss figures?

A I don't believe they do. It's my understanding they don't, but I could be wrong.

Q I don't think you are, we'll get a memo and show the jury that.

A But I don't believe it's in that category.

Q So excess cases are not included in this win-loss figure, either, at least based on what you know.

A Correct.

Q Okay. Now, when we subpoenaed you for your first deposition in 1994, we'd never talked, had we?

A No.

Q Did you attempt to see if State Farm wished to hire an attorney to represent you, or to go through your documents, or do whatever?

A Yes. As soon as I got the subpoena, I called [202] a law firm that does represent State Farm, and explained the situation, said at the time that all this --

MR. SCHULTZ: Your Honor, can we approach the bench?

THE COURT: You may.

(Side bar conference held out of the hearing of the Jury.)

Q (BY MR. HUMPHERYS) Let's just move on, Ms. Bird. At the time you gave your deposition back in 1994, you hadn't reviewed your notes you took with you; is that a fair statement? I think you've said that.

A I hadn't reviewed my notes I took with me? What do you mean?

Q Well, all of the documents that we've looked at.

A Correct. I hadn't gone through them.

Q All right. Now, it's proper to fight a buildup case, isn't it? A fraud case, or a buildup case, where a claimant is simply trying to get too much money?

A Oh, you mean as State Farm, as a company, it's proper for them to fight over-inflated claims.

Q Sure.

A Yes.

Q But you still try and offer a fair value for [203] those kinds of claims?

A If there's a true injury, you need to offer what it truly warrants, yes.

Q Are you aware that after Ms. Cammack came to you, as we have seen in your notes and in your memos, that she has been promoted three times? Do you know that?

A I believe she was promoted one of those times while I was still employed, and I'd heard that she'd been promoted a couple of more times since then.

Q And Mr. Noxon, who was the superintendent on the Campbell file, he was promoted as well? Do you know that?

A You mean from the time he was a superintendent on the file? Yes, he was promoted to divisional claims superintendent.

Q All right. We need to just make sure we understand the distinction, here, that Mr. Schultz was talking about regarding the minimum threshold requirements in order to bring a claim for pain and suffering. If someone has not met the threshold, would that be a BI claim, or a PIP claim?

A It's normally still held within the property damage-PIP section. It normally doesn't get popped out to the more experienced unit, because it's not something [204] that's going to need their education and attention.

Q So until they exceed those thresholds, it doesn't even, it's not even counted as a BI claim; is that right?

A I'm going to have to qualify this. They have a separate category for those.

Q That they expect to go over?

A It isn't a liability coverage, but they have the claim handlers with the lesser amount of experience handling them, because you're only paying an out-of-pocket expense. You're exchanging $30 for a $30 bill. You're not having to guess at pain and suffering. That would make it a full-blown BI claim.

So those types of claims that do not exceed threshold are still typically handled by the least experienced units, because if there's any payment made, you simply swap a check for a bill of an equal amount.

Q It's a smaller amount, typically, on the average?

A Oh, yes, because it would be less than threshold.

Q And on the BI unit, the one you were supervising, that would be the larger claims that this didn't apply, correct?

A Correct. I would say almost all of them were [205] claims that exceeded the threshold. We didn't work them if they didn't exceed the threshold.

Q In your experience, under Mr. Noxon, was it a constant battle for you to try and pay fair value on claims?

A Constantly.

Q Was life pleasant for you while you were working under Mr. Noxon?

A Some days were okay, but he's retaliatory in nature. If he were angry at me, for example, I would have a tough time getting access to his office to even talk to him about files or authority.

I would say, "I've got a pretrial this afternoon, so stick around, I might need some money right away for judge so-and-so." And he would intentionally be gone those times.

Or I would say, "Something new's come up, I want to settle with this guy. My attorney tells me to settle with this man, I'm going to need to talk to you by noon."

"Well, I'm too busy, go away and come back later."

"Well, I've got to talk to you by noon."

And it was just, it was hard to get access to him. And once I got access, depending on his mood, or [206] if he were mad at me or one of my claim reps, none of us would get the money that we'd ask for.

Q All right. And all of this was explained to the division manager above Mr. Noxon?

A Yes.

Q And you were told that you were not a team player?

A Yes.

Q Was this unpleasantness that you've described, this hassling, this problem, part of the reason why you left State Farm?

A That was a part of it, yes.

* * *

[208] * * *

Q All right. Now, you were proceeding to explain to Mr. Schultz the difference between misrepresenting by what you're writing and misrepresenting by what you're not writing. Is telling less than the full amount, or the full truth sometimes misleading?

A Yes, it's misrepresenting by omission.

Q And sometimes did you find yourself in practice engaging in that?

A Yes, there were many times you just simply did not write everything that went on in a file.

Q That's not what's in training manuals, is it? That's just kind of what you learn?

A Through practical training, yes.

Q That's what I was trying to distinguish, [209] between policy and practice.

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[210] * * *

RECROSS EXAMINATION BY MR. SCHULTZ:

* * *

[211] Q Okay. Now, you said it wouldn't be morally right not to make an offer for four years or six years. Let me add one additional fact to that. Well, let me back up.

Do you think it's morally right for a plaintiff to demand policy limits of $50,000, and to claim that the case is worth a lot more than that for years and years on a case that a jury ultimately awards $5,000?

A Well, from fighting plaintiff attorneys for many years, I never thought it was fair they had different rules than we did, that they could ask whatever, but our offers had to have some merit to them. They would ask for the moon, but ultimately most of them settled for a more proper figure. A figure more in line.

Whether it's morally right or not, it's probably not morally right, but they don't have the same constraints against them that an insurance company has. So they are allowed to do it, it is more acceptable for them to do that than it would be for an insurance to low ball by that large of difference.

Q So they don't have to ask for fair value?

A Basically they don't have to ask for fair value, no. Insurance companies do.

[212] Q But this wasn't a low ball offer, was it, $15,000?

A In your example, or his? His?

Q Well, in the example where the jury awarded $5,000.

A No, the amount wouldn't have been low ball. I think, I was more objecting to the timing in his example.

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[216] * * *

REDIRECT EXAMINATION BY MR. HUMPHERYS:

Q The company offers zero until all the way a month before trial. Is that considered low balling? You used that term.

A It would be if they could have offered that many years prior and chose, as a tactical move, not to.

Q Okay. And that would be in violation of the fair claims practices, wouldn't it?

A Yes.

* * * *